

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 2 of 6 / Pages 290 to 529 of 1389**

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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 2 of 5 • Pages 00287 – 00525 of 00923**

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MJN/291

1
2 **DECLARATION OF JAN S. RAYMOND**
3

4 I, Jan Raymond declare:

5 I am an attorney licensed to practice by the California State Bar, State Bar number
6 88703, and admitted to practice in the United States Federal Court for the Eastern
7 District of California. My business is researching legislative history and interpreting
8 legislative intent, I have over 15 years experience in legislative research and analysis of
9 legislative intent.

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

13 **Civil Code Sections 1791(o), 1791.2(a)(1), 1794(a)&(b) & 1795.7**
14 **In particular:**

15 **Chapter 1333, Statutes of 1970**

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

17 **Chapter 1523, Statutes of 1971**

18 Enacting 1795.5 and amending 1794

19 **Chapter 169, Statutes of 1974**

20 Enacting 1795.5(d)

21 **Chapter 991, Statutes of 1978**

22 Enacting 1791(o)

23 **Chapter 385, Statutes of 1982**

24 Repealing and reenacting 1794

25 **Chapter 728, Statutes of 1983**

26 Amending 1795.5

27 **Chapter 1047, Statutes of 1985**

28 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).

24 We report in a series of volumes. This Volume 2 contains discussion and materials
25 regarding the 1978, 1983, 1983 and 1985 enactments.

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

28 (888) 676-1947

Declaration of Jan Raymond

Page 1 of 6

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

LEGISLATIVE HISTORY CLEARINGHOUSE

www.lhclearinghouse.com

0028

MJN/292

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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 **1978 Chapter 991**

26	Excerpt regarding Assembly Bill 3374 (Lockyear) from the Assembly Final History, 1977-78 Regular Session.	Page 1
27	AB 3374 as introduced March 29, 1978.	Page 3
28	Documents regarding AB 3374 as introduced from the bill file of the Assembly Committee on Labor, Employment and Consumer Affairs, five pages.	Page 10
	Assembly Committee on Labor, Employment and Consumer Affairs analysis of AB 3374 as proposed to be amended in Committee, for hearing May 24, 1978.	Page 15
	Document regarding AB 3374 as introduced dated May 27 from the bill file of the Assembly Committee on Labor, Employment and Consumer Affairs, two pages.	Page 17
	AB 3374 as amended in the Assembly June 1, 1978.	Page 19

1	Assembly Office of Research Third Reading analysis of AB 3374 as amended June 1, 1978.	Page 27
2		
3	Documents regarding AB 3374 as amended June 1 from the bill file of the Senate Committee on Judiciary, five pages.	Page 28
4	Senate Committee on Judiciary analysis of AB 3374 as amended June 1.	Page 33
5	AB 3374 as amended in the Senate August 7, 1978.	Page 38
6		
7	Senate Republican Caucus Third Reading analysis of AB 3374 as amended 8/7/78.	Page 46
8	Senate Democratic Caucus Third Reading analysis of AB 3374 as amended 8/7/79.	Page 48
9		
10	Assembly Office of Research Unfinished Business analysis of AB 3374 as amended 7 August 1978.	Page 49
11		
12	Selected document regarding AB 3374 from the enrolled bill file of former Governor Edmund G. Brown, Jr., nine pages.	Page 50
13	Chapter 991, Statutes of 1978.	Page 59
14	Excerpt regarding Chapter 991 from the Summary Digest for 1978.	Page 64
15	<u>1982 Chapter 385</u>	
16		
17	Excerpt regarding Assembly Bill 3560 (Tanner) from the Assembly Final History, 1981-82 Regular Session.	Page 66
18	AB 3560 as introduced March 15, 1982.	Page 68
19		
20	Documents regarding AB 3560 as introduced from the bill file of the Assembly Committee on Consumer Protection and Toxic Materials, sixteen pages. The document entitled in part "Explanation and Analysis of AB 3560 (Tanner)" dated March 1982 was also found in the Senate Committee on Judiciary and Assembly Republican Caucus files.	Page 71
21		
22	Assembly Committee on Consumer Protection and Toxic Materials analysis of AB 3560 as introduced, for hearing April 27, 1982.	Page 87
23		
24	Letter regarding AB 3560 as introduced dated April 30 with attached statement, found in the file of the Assembly Committee on Consumer Protection and Toxic Materials, five pages.	Page 88
25		
26		
27		
28		

1	Senate Committee on Judiciary Background Information Sheet from the committee files, one page.	Page 93
2		
3	Letter dated June 3, 1982, found in the bill files of the Senate Committee on Judiciary and the Assembly Republican Caucus, two pages.	Page 94
4	Senate Committee on Judiciary analysis of AB 3560 as introduced.	Page 96
5	Senate Democratic Caucus Third Reading analysis of AB 3560 as introduced.	Page 99
6	Senate Republican Caucus Third Reading analysis of AB 3560 as introduced.	Page 101
7		
8	Selected document regarding AB 3560 from the enrolled bill file of former Governor Edmund G. Brown, Jr., five pages.	Page 103
9	Letter dated August 11 from the bill file of the Assembly Committee on Consumer Protection and Toxic Materials, one page.	Page 108
10		
11	Chapter 385, Statutes of 1982.	Page 109
12	Excerpt regarding Chapter 385 from the Summary Digest for 1982.	Page 110
13	<u>1983 Chapter 728</u>	
14	Excerpt regarding Assembly Bill 1998 (Tanner) from the Assembly Final History, 1983-84 Regular Session.	Page 112
15		
16	AB 1998 as introduced March 4, 1982.	Page 114
17	Consumer Affairs Bill Analysis of AB 1998 as introduced from the bill file of the Assembly Republican Caucus, four pages.	Page 116
18	AB 1998 as amended in the Assembly May 5, 1998.	Page 120
19	Committee Statement from the bill file of the author, one page.	Page 123
20	Assembly Committee on Consumer Protection and Toxic Materials analysis of AB 1998 as amended May 5, 1983.	Page 124
21		
22	Senate Committee on Insurance, Claims and Corporations bill analysis worksheet for AB 1998, from the committee file, one page.	Page 125
23		
24	Senate Insurance, Claims and Corporations analysis of AB 1998 as amended May 5, 1983.	Page 126
25		
26	Consumer Affairs "No Analysis Required", of AB 1998 from the bill file of the Assembly Republican Caucus, one page.	Page 127

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

1	Senate Democratic Caucus Consent analysis of AB 1998 as amended 5/5/83.	Page 128
2		
3	Senate Republican Caucus Third Reading analysis of AB 1998 as amended 5/5/83.	Page 130
4		
5	Selected document regarding AB 1998 from the enrolled bill file of former Governor Edmund G. Brown, Jr., two pages.	Page 132
6	Chapter 728, Statutes of 1983.	Page 134
7	Excerpt regarding Chapter 728 from the Summary Digest for 1983.	Page 136
8	<u>1985 Chapter 1047</u>	
9	Excerpt regarding Assembly Bill 2285 (Moore) from the Assembly Final History, 1985-86 Regular Session.	Page 138
10		
11	AB 2285 as introduced March 8, 1985.	Page 140
12	DMV analysis of AB 2285 as introduced from the bill file of the Assembly Republican Caucus, two pages.	Page 142
13		
14	AB 2285 as amended in the Assembly April 15, 1985.	Page 144
15	Documents regarding AB 2285 as amended 4/15 from the bill file of the author, three pages.	Page 146
16	Two Assembly Consumer Protection Committee analyses as amended April 15, 1985, for hearing 5/2 and 5/8.	Page 149
17		
18	Documents regarding AB 2285 as amended 4/15, dated May 14 and later, from the bill file of the author, four pages.	Page 153
19		
20	AB 2285 as amended in the Assembly May 21, 1985.	Page 157
21	Assembly Third Reading analysis of AB 2285 as amended May 21, 1985.	Page 159
22	Consumer Affairs bill analysis of AB 2285 as amended May 21 from the bill file of the Assembly Republican Caucus, four pages.	Page 161
23		
24	Correspondence regarding AB 2285 as amended May 21 from the bill file of the author, four pages.	Page 165
25		
26	Senate Committee on Insurance, Claims and Corporations Background Information Request, with attachments, found in the bill file of the committee and the author, six pages.	Page 169

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Letter dated June 19 and proposed amendments from the bill file of the author,
four pages. Page 175

AB 2285 as amended in the Senate June 27, 1985. Page 179

Senate Insurance, Claims and Corporations Committee analysis of AB 2285 as
amended June 27, 1985. Page 182

Documents regarding AB 2285 as amended June 27 from the bill file of the
author, three pages. Page 184

AB 2285 as amended in the Senate August 27, 1985. Page 187

SFA Third Reading analysis of AB 2285 as amended 8/28/85. Page 190

AB 2285 as amended in the Senate September 3, 1985. Page 192

Statements regarding AB 2285 from the bill file of the author, five pages. Page 196

SFA Third Reading analysis of AB 2285 as amended 9/3/85. Page 201

Concurrence in Senate Amendments analysis of AB 2285 as amended 9/3/85. Page 203

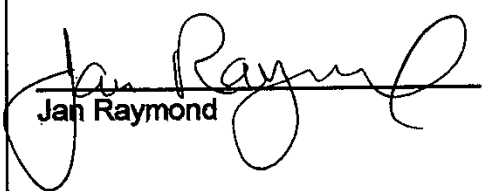
Selected document regarding AB 2285 from the enrolled bill file of former
Governor George Deukmajian, six pages. Page 205

Chapter 1047, Statutes of 1985. Page 211

Excerpt regarding Chapter 1047 from the Summary Digest for 1985. Page 214
This collection ends with page 215

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

Executed at Davis California, April 3, 2000.


Jan Raymond

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VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1977-78 REGULAR SESSION
1977-78 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 6, 1976
Recessed December 8, 1976 Reconvened January 3, 1977
Recessed March 31, 1977 Reconvened April 11, 1977
Recessed June 24, 1977 Reconvened August 1, 1977
Recessed September 15, 1977 Reconvened January 3, 1978
Recessed March 16, 1978 Reconvened March 27, 1978
Recessed July 5, 1978 Reconvened August 7, 1978
Adjourned September 1, 1978
Adjourned Sine Die November 30, 1978
Legislative Days..... 256

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. VINCENT THOMAS
Assistant Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. PAUL PRIOLO
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

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MJN/298

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A.B. No. 3373—Berman.

An act to amend Section 44345 of the Education Code, relating to certificated employees.

1978

- Mar. 29—Read first time.
- Mar. 30—Referred to Com. on ED. To print.
- April 1—From printer. May be heard in committee May 1.
- May 11—In committee: Set, first hearing. Hearing canceled at the request of author.
- May 15—From committee chairman, with author's amendments: Amend, and re-refer to Com. on ED. Read second time and amended.
- May 16—Re-referred to Com. on ED.
- May 18—In committee: Hearing postponed by committee.
- May 25—In committee: Set, second hearing. Hearing canceled at the request of author.
- Nov. 30—From committee without further action.

A.B. No. 3374—Lockyer.

An act to amend Sections 1791, 1791.1, 1791.2, 1792, 1792.1, 1792.2, 1793, 1793.2, 1793.3, 1793.35, 1793.4, 1794, 1795.1, and 1795.5 of, and to add Chapter 2 (commencing with Section 1796) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, relating to consumer warranties.

1978

- Mar. 29—Read first time.
- Mar. 30—Referred to Com. on L., E., & C.A. To print.
- April 1—From printer. May be heard in committee May 1.
- May 17—In committee: Set, first hearing. Hearing canceled at the request of author.
- May 31—From committee: Amend, and do pass as amended. (Ayes 11. Noes 0.) (May 24.)
- June 1—Read second time and amended. Ordered returned to second reading.
- June 5—Read second time. To third reading.
- June 8—Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 15363.)
- June 8—In Senate. Read first time.
- June 14—Referred to Com. on JUD.
- July 5—From committee: Amend, and do pass as amended. (Ayes 5. Noes 1.)
- Aug. 7—Read second time, amended, and to third reading.
- Aug. 21—Read third time, passed, and to Assembly. (Ayes 25. Noes 6. Page 13985.)
- Aug. 21—In Assembly. Concurrence in Senate amendments pending.
- Aug. 22—Senate amendments concurred in. To enrollment. (Ayes 76. Noes 0. Page 17675.) (Corrected August 24.)
- Aug. 28—Enrolled and to the Governor at 11 a.m.
- Sept. 20—Approved by the Governor.
- Sept. 21—Chaptered by Secretary of State—Chapter 991, Statutes of 1978.

A.B. No. 3375—Chimbole.

An act to amend Section 7470 of the Government Code, relating to financial records.

1978

- Mar. 29—Read first time.
- Mar. 30—Referred to Com. on CRIM.J. To print.
- April 1—From printer. May be heard in committee May 1.
- May 22—In committee: Set, first hearing. Hearing canceled at the request of author.
- Nov. 30—From committee without further action.

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ASSEMBLY BILL

No. 3374

Introduced by Assemblyman Lockyer

March 29, 1978

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1793, 1793.2, 1793.3, 1793.4, 1794, and 1795.5 of, to add Section 1795.8 to, to add Article 4 (commencing with Section 1795.9) to Chapter 1 of Title 1.7 of Part 4 of Division 3 of, and to repeal Section 1795.1 of, the Civil Code.

LEGISLATIVE COUNSEL'S DIGEST

AB 3374, as introduced, Lockyer (L., E., & C.A.). Consumer warranties.

Existing law provides that unless disclaimed, a manufacturer's implied warranty of merchantability shall accompany every sale of consumer goods sold at retail.

This bill, in addition, would provide that unless disclaimed, a retail seller's implied warranty shall accompany every sale of consumer goods sold at retail.

Existing law provides that a manufacturer, distributor or retailer making express warranties as to consumer goods may not limit, modify, or disclaim implied warranties.

This bill would provide that a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given may not limit, modify or disclaim implied warranties.

Existing law provides for an action by a buyer of consumer goods as to a willful violation of specified consumer warranty provisions and provides for treble damages and attorneys

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MJN/300

fees as to such an action.

This bill would delete the requirement that a violation be willful and would provide for damages, rather than treble damages, and any other appropriate legal and equitable relief and costs and attorneys' fees as to such an action.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill would delete such exemption.

The bill also would require persons who install or service or repair new or used consumer goods to perform such work in a good and workmanlike manner.

It would recast provisions relating to cost of repair of non-conforming goods and also make other related changes.

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

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

SECTION 1. 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 clothing 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 Clothing 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 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) "Independent repair or service facility" or "independent serviceman" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Soft goods" means any pliable product substantially composed of woven material, natural or synthetic yarn or fiber, textile, or similar product, but shall not include carpeting or tires. "Sale" means (1) the passing of title from the seller to the buyer for a price, pursuant to the provisions of Section 2401 of the Commercial Code, or (2) a consignment for sale.

(h) "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.

(i) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

(j) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business,

000004

1 as defined in subdivision (i).
 2 SEC. 2. Section 1791.1 of the Civil Code is amended
 3 to read:
 4 1791.1. As used in this chapter:
 5 (a) "Implied warranty of merchantability" or "implied
 6 warranty that goods are merchantable" means that the
 7 consumer goods meet each of the following:
 8 (1) Pass without objection in the trade under the
 9 contract description.
 10 (2) Are fit for the ordinary purposes for which such
 11 goods are used.
 12 (3) Are adequately contained, packaged, and labeled.
 13 (4) Conform to the promises or affirmations of fact
 14 made on the container or label.
 15 (b) "Implied warranty of fitness" means that when the
 16 retailer, distributor, or manufacturer has reason to know
 17 any particular purpose for which the consumer goods are
 18 required, and further, that the buyer is relying on the skill
 19 and judgment of the seller to select and furnish suitable
 20 goods, then there is an implied warranty that the goods
 21 shall be fit for such purpose.
 22 (c) The duration of the implied warranty of
 23 merchantability and where present the implied warranty
 24 of fitness shall be coextensive in duration with an express
 25 warranty which accompanies the consumer goods,
 26 provided the duration of the express warranty is
 27 reasonable; but in no event shall such implied warranty
 28 have a duration of less than 60 days nor more than one
 29 year following the sale of new consumer goods to a retail
 30 buyer. Where no duration for an express warranty is
 31 stated with respect to consumer goods, or parts thereof,
 32 the duration of the implied warranty shall be the
 33 maximum period prescribed above.
 34 (d) Any buyer of consumer goods injured by a breach
 35 of the implied warranty of merchantability and where
 36 applicable by a breach of the implied warranty of fitness
 37 may bring an action for the recovery of damages
 38 pursuant to the provisions of *has the remedies provided*
 39 *in Chapter 6 (commencing with Section 2601) and*
 40 *Chapter 7 (commencing with Section 2701) of Division 2*

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1 of the Commercial Code, and, in ~~such~~ any action brought
 2 under such provisions, the provisions of subdivision (b) of
 3 Section 1794 of this chapter shall apply.
 4 SEC. 3. Section 1792 of the Civil Code is amended to
 5 read:
 6 1792. Unless disclaimed in the manner prescribed by
 7 this chapter, every sale or consignment for sale of
 8 consumer goods that are sold at retail in this state shall be
 9 accompanied by the manufacturer's and the retail seller's
 10 implied warranty that the goods are merchantable.
 11 SEC. 4. Section 1792.1 of the Civil Code is amended
 12 to read:
 13 1792.1. Every sale or consignment for sale of
 14 consumer goods that are sold at retail in this state by a
 15 manufacturer who has reason to know at the time of the
 16 retail sale that the goods are required for a particular
 17 purpose and that the buyer is relying on the
 18 manufacturer's skill or judgment to select or furnish
 19 suitable goods shall be accompanied by such
 20 manufacturer's implied warranty of fitness.
 21 SEC. 5. Section 1792.2 of the Civil Code is amended
 22 to read:
 23 1792.2. Every sale or consignment for sale of
 24 consumer goods that are sold at retail in this state by a
 25 retailer or distributor who has reason to know at the time
 26 of the retail sale that the goods are required for a
 27 particular purpose, and that the buyer is relying on the
 28 retailer's or distributor's skill or judgment to select or
 29 furnish suitable goods shall be accompanied by such
 30 retailer's or distributor's implied warranty that the
 31 goods are fit for that purpose.
 32 SEC. 6. Section 1793 of the Civil Code is amended to
 33 read:
 34 1793. Nothing in this chapter shall affect the right of
 35 the manufacturer, distributor, or retailer to make express
 36 warranties with respect to consumer goods. However, a
 37 manufacturer, distributor, or retailer making, in
 38 transacting a sale in which express warranties are given,
 39 may not limit, modify, or disclaim the implied warranties
 40 guaranteed by this chapter to the sale of consumer goods.

14th District Court of Appeal Division 2

1 SEC. 7. Section 1793.2 of the Civil Code is amended
2 to read:

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

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

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

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

33 (b) Where such service and repair facilities are
34 maintained in this state and service or repair of the goods
35 is necessary because they do not conform with the
36 applicable express warranties, service and repair shall be
37 commenced within a reasonable time by the
38 manufacturer or its representative in this state. *In the*
39 *case of a defect, malfunction or failure to conform with*
40 *such express warranties, the goods must be serviced or*

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1 *repaired without charge to the consumer.* Unless the
2 buyer agrees in writing to the contrary, the goods must
3 be serviced or repaired so as to conform to the applicable
4 warranties within 30 days. Delay caused by conditions
5 beyond the control of the manufacturer or his
6 representatives shall serve to extend this 30-day
7 requirement. Where such delay arises, conforming goods
8 shall be tendered as soon as possible following
9 termination of the condition giving rise to the delay.

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

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

40 SEC. 8. Section 1793.3 of the Civil Code is amended

1 to read:

2 1793.3. If the manufacturer of consumer goods sold in
3 this state for which the manufacturer has made an
4 express warranty does not provide service and repair
5 facilities within this state pursuant to subdivision (a) of
6 Section 1793.2, the buyer of such manufacturer's
7 nonconforming goods may follow the course of action
8 prescribed in either subdivision (a), (b), or (c), below, as
9 follows:

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

22 (b) Return the nonconforming consumer goods to any
23 retail seller, within this state, of like goods of the same
24 manufacturer for replacement, or for service or repair.
25 *The retail seller shall have the option to either replace,*
26 *service, or repair the nonconforming goods.*

27 (c) Secure the services of an independent repair or
28 service facility for the service or repair of the
29 nonconforming consumer goods, when service or repair
30 of the goods can be economically accomplished. In that
31 event the manufacturer shall be liable to the buyer, or to
32 the independent serviceman upon an assignment of the
33 buyer's rights, for the actual and reasonable cost of
34 service and repair, including any cost for parts and any
35 reasonable cost of transporting the goods or parts, plus a
36 reasonable profit. It shall be a rebuttable presumption
37 affecting the burden of producing evidence that the
38 reasonable cost of service or repair is an amount equal to
39 that which is charged by the independent serviceman for
40 like services or repairs rendered to service or repair

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1 customers who are not entitled to warranty protection.
2 Any waiver of the liability of a manufacturer shall be void
3 and unenforceable.

4 The course of action prescribed in this subdivision shall
5 be available to the buyer only after the buyer has
6 followed the course of action prescribed in either
7 subdivision (a) or (b) and such course of action has not
8 furnished the buyer with appropriate relief. In no event,
9 shall the provisions of this subdivision be available to the
10 buyer with regard to consumer goods with a wholesale
11 price to the retailer of less than fifty dollars (\$50).

12 ~~In no event shall the buyer be responsible for service~~
13 ~~or repair costs charged by the independent repair or~~
14 ~~service facility which accepts service or repair of~~
15 ~~nonconforming consumer goods under this section. Such~~
16 ~~independent repair or service facility shall only hold the~~
17 ~~manufacturer liable for such costs.~~

18 (d) A retail seller to which any nonconforming
19 consumer good is returned pursuant to subdivision (a) or
20 (b) shall have the option of providing service or repair
21 itself or directing the buyer to a reasonably close
22 independent repair or service facility *capable of handling*
23 *the repairs and willing to accept service or repair under*
24 *this section.* In the event the retail seller directs the buyer
25 to an independent repair or service facility, the
26 manufacturer shall be liable for the reasonable cost of
27 repair services in the manner provided in subdivision (c).

28 (e) In the event a buyer is unable to return
29 nonconforming goods to the retailer due to reasons of size
30 and weight, or method of attachment, or method of
31 installation, or nature of the nonconformity, the buyer
32 shall give notice of the nonconformity to the retailer.
33 Upon receipt of such notice of nonconformity the retailer
34 shall, at its option, service or repair the goods at the
35 buyer's residence, or pick up the goods for service or
36 repair, or arrange for transporting the goods to its place
37 of business. The reasonable costs of transporting the
38 goods shall be at the retailer's expense. The retailer shall
39 be entitled to recover all such reasonable costs of
40 transportation from the manufacturer pursuant to

4th District Court of Appeal Division 2

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1. Section 1793.5. The reasonable costs of transporting
2. nonconforming goods after delivery to the retailer until
3. return of the goods to the buyer, when incurred by a
4. retailer, shall be recoverable from the manufacturer
5. pursuant to Section 1793.5. Written notice of
6. nonconformity to the retailer shall constitute return of
7. the goods for the purposes of subdivisions (a) and (b).

8. (f) The manufacturer of consumer goods with a
9. wholesale price to the retailer of fifty dollars (\$50) or
10. more, for which the manufacturer has made express
11. warranties shall provide written notice to the buyer of
12. the courses of action available to him under subdivision
13. (a), (b), or (c).

14. SEC. 9. Section 1793.4 of the Civil Code is amended
15. to read:

16. 1793.4. Where an option is exercised in favor of
17. service and repair under Section 1793.3, such service and
18. repair must be performed without charge and
19. commenced within a reasonable time, and, unless the
20. buyer agrees in writing to the contrary, goods
21. conforming to the applicable express warranties shall be
22. tendered within 30 days. Delay caused by conditions
23. beyond the control of the retail seller or his
24. representative shall serve to extend this 30-day
25. requirement. Where such a delay arises, conforming
26. goods shall be tendered as soon as possible following
27. termination of the condition giving rise to the delay.

28. SEC. 10. Section 1794 of the Civil Code is amended to
29. read:

30. 1794. Any buyer of consumer goods injured by a
31. willful violation of the provisions of this chapter or a
32. violation of the implied or express warranty or service
33. contract may bring an action for the recovery of damages
34. and other legal and equitable relief, and

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

37. (b) Reasonable attorney fees may be awarded, if the
38. buyer finally prevails in any action brought under this
39. section, he or she may be allowed by the court to recover
40. as part of the judgment a sum equal to the aggregate

1 amount of cost and expenses (including attorney's fees
2 based on actual time expended) determined by the
3 court to have been reasonably incurred by the plaintiff
4 for or in connection with the commencement and
5 prosecution of such action, unless the court in its
6 discretion shall determine that such an award of
7 attorneys' fees would be inappropriate.

8 SEC. 11. Section 1795.1 of the Civil Code is repealed.

9 1795.1. No requirement of this chapter shall apply to
10 any equipment or any part thereof which is a component
11 of a system designed to heat, cool, or otherwise condition
12 air where such a system shall become a fixed part of a
13 structure, unless an express warranty respecting such
14 component has been made by the retailer thereof, in
15 which event it shall be the duty of the retailer to give
16 effect to the provisions of this chapter.

17 SEC. 12. Section 1795.5 of the Civil Code is amended
18 to read:

19 1795.5. Notwithstanding the provisions of subdivision
20 (a) of Section 1791 defining consumer goods to mean
21 "new" goods, the obligation of a distributor or retail seller
22 of used consumer goods shall be the same as that imposed
23 on manufacturers under this chapter in a sale in which an
24 express warranty is given, except if a distributor or retail
25 seller of used consumer goods makes express warranties
26 with respect to used goods that are sold in this state, the
27 obligation of such distributor or retail seller shall be the
28 same as that imposed on the manufacturer under this
29 chapter, except:

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

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

40 (c) The duration of the implied warranty of

4th District Court of Appeal Division 2.

1 merchantability and where present the implied warranty
 2 of fitness with respect to used consumer goods sold in this
 3 state, where the sale is accompanied by an express
 4 warranty, shall be coextensive in duration with an express
 5 warranty which accompanies the consumer goods,
 6 provided the duration of the express warranty is
 7 reasonable, but in no event shall such implied warranties
 8 have a duration of less than 30 days nor more than three
 9 months following the sale of used consumer goods to a
 10 retail buyer. Where no duration for an express warranty
 11 is stated with respect to such goods, or parts thereof, the
 12 duration of the implied warranties shall be the maximum
 13 period prescribed above.

14 (d) The obligation of the distributor or retail seller who
 15 makes express warranties with respect to used goods that
 16 are sold in this state, shall extend to the sale of all such
 17 used goods, regardless of when such goods may have been
 18 manufactured.

19 SEC. 13. Section 1795.8 is added to the Civil Code, to
 20 read:

21 1795.8. Any individual, partnership, corporation,
 22 association, or other legal relationship which engages in
 23 the business of installing new or used consumer goods,
 24 has a duty to the buyer to install them in a good
 25 workmanlike manner.

26 SEC. 14. Article 4 (commencing with Section 1795.9)
 27 is added to Chapter 1 of Title 1.7 of Part 4 of Division 3
 28 of the Civil Code, to read:

29
 30 Article 4. Service and Repair Warranties

31
 32 1795.9. Any individual, partnership, corporation,
 33 association, or other legal relationship which engages in
 34 the business of providing service or repair to new or used
 35 consumer goods has a duty to the purchaser to perform
 36 those services in a good and workmanlike manner.

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LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
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INSTITUTE OF HEATING & AIR CONDITIONING INDUSTRIES

606 North Larchmont Boulevard, Suite A

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Vice-President

Sheldon Plotkin
Secretary-Treasurer

Gerson D. Ribnick
Executive Director

Mrs. Rickey Gamore
Executive Secretary

file
May 9, 1978

The Honorable William Lockyear
State Assemblyman
State Capitol
Sacramento, California - 95814

*Year
Consumer
Warranties*

RE: OPPOSITION TO AB 3374 (REPEAL OF SECTION 1795.1)

Dear Assemblyman Lockyear:

Please be advised that the heating and air conditioning industry is opposed to the Repeal of Section 1795.1 of AB 3374.

The history surrounding the exemption of Section 1795.1 was quite clear and concise when it was first introduced and it passed the State Legislature in 1971 with very little opposition. To date, there has been no consumer outcry as a result of the exemption and it was proven to the Legislature that the Song-Beverly Act was not created to cover the work of real property improvements or systems comprised of many component products. The terms "contractor" and "contracting" are void within the Act.

The definition of "consumer goods" does not encompass our type of systems. Any attempt to add such a definition would cause a great deal of confusion and there has been no public consumer outcry for any such action. Contractors are not "retailers" and there are many laws, rules and regulations that qualify this issue.

Protecting the consumer in matters pertaining to solar equipment may be a justifiable action, however, the Song-Beverly Act should not be the vehicle to offer such protection. Many issues relative to solar equipment are already covered in the Energy Conservation Act.

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The Honorable William Lockyear
May 9, 1978
Page Two

The heating and air conditioning industry asks that you consider its proposal that Repeal of Section 1795.1 (Page 11, Line 8) be deleted from AB 3374.

Thank you for your consideration of this proposal.

Sincerely,

INSTITUTE OF HEATING & AIR CONDITIONING INDUSTRIES


Gerson D. Ribnick
Executive Director

GDR/mls

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**COUNTY OF LOS ANGELES
DEPARTMENT OF CONSUMER AFFAIRS**

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SHIRLEY GOLDINGER
Director

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BAXTER WARD

May 19, 1978

Assemblyman Bill Lockyer
State Capitol
Sacramento, CA 95814

Dear Bill:

AB 3374 - CONSUMERS WARRANTIES

Per our conversation yesterday, enclosed is our statement of support for AB 3374. Thank you for agreeing to present this to the Committee on our behalf.

Sincerely,

SHIRLEY GOLDINGER
Director of Consumer Affairs

kj
Enclosure

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COUNTY OF LOS ANGELES DEPARTMENT OF CONSUMER AFFAIRS

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STATEMENT OF SUPPORT

AB 3374 (Lockyer) CONSUMER WARRANTIES

Because of limitations in California's Song-Beverly Warranty Act, consumers are denied certain protections and remedies when many types of consumer products fail to perform properly. Specifically, it appears that products such as furniture, camping gear, sporting equipment, draperies, luggage and others are not subject to the Act's implied warranty provisions. What this means to consumers is that if such products prove to be defective, they have no recourse under Song-Beverly. The Los Angeles County Department of Consumer Affairs, and the Los Angeles County Board of Supervisors feel strongly that there is no justification for exempting these or other consumer products from a law which essentially and simply says a product must perform as intended, for a reasonable period of time.

Consumer complaints filed with the Los Angeles County Department of Consumer Affairs frequently concern product defects, warranties and unsatisfactory repairs. Since our operations commenced in April 1976, we have processed over 2,000 such complaints. More product defect complaints were filed about home furnishing products than any other type of consumer good. We are satisfied that AB 3374 is responsive to this demonstrated consumer problem.

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Page 2
AB 3374 (Lockyer)

Another critical limitation of the Act has been the exemption allowed for air cooling and heating equipment. Consistent with our basic belief that no consumer goods ought to be exempted, and in recognition of the advent of a solar equipment industry, we fully support the bill's repeal of this exemption.

We appreciate your consideration of a bill which quite simply codifies every consumers right to purchase non-defective merchandise. Thank you.

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ASSEMBLY COMMITTEE ON LABOR, EMPLOYMENT, & CONSUMER AFFAIRS
Bill Lockyer, Chairman

HEARING DATE: May 24, 1978

BILL: AB 3374 (To be amended in Committee)

AUTHOR: Lockyer

SUBJECT: Consumer Warranties

FILE COPY

BACKGROUND

The Song-Beverly Consumer Warranty Act spells out specific rights and remedies available to consumers. Hailed as a model piece of legislation at the time it was enacted in 1970, it was felt that the Song-Beverly Act would set the groundwork for consumer protection legislation not only in other states but on a federal level as well.

In the eight years that have passed since the Song-Beverly Act was enacted, consumer agencies have had the opportunity to work extensively with the statutes and allege that deficiencies of both a conceptual and technical nature exist.

BILL

AB 3374, as amended, does the following:

1. Broadens the definition of "consumer goods" to include all new products except for clothing and consumables;
2. Extends accountability for an implied warranty to the retailer as well as the manufacturer. In so doing, language is included to reinforce the retailers right of recovery from the manufacturer.
3. Clarifies the options that a retail seller must perform where there are goods not conforming with an express warranty and the manufacturer does not provide service or repair facilities within the state. Included is the requirement that before a consumer is referred to an independent repair facility, the facility must agree to perform the necessary work.
4. Allows the court upon making an award to a consumer injured by a willful violation of the provisions of this chapter to include costs and fees incurred.
5. Deletes the exemption from the provisions of the Song-Beverly Act currently extended to air heaters and coolers.
6. Adds sections to the Civil Code requiring that installation, service and repair of consumer goods must be done in a 'good and workmanlike' manner.

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ANALYSIS

1. The products that fall under the regulations of the Song-Beverly Act are those products defined as 'consumer goods'. The present definition is restricted to predominantly mechanical type products and excludes such goods as furniture, phonograph records, tapes, picture frames and drapes. Due to the manner in which clothing and consumables are handled, it makes some sense to exempt such goods. Beyond that, the question must be raised as to why any good should be excluded; should not all products sold be required to perform in the manner intended? The definition of 'consumer goods' proposed by this piece of legislation would include all goods except clothing and consumables.

2. Consumer representatives cite the situation where a consumer returns a defective product to the retailer, only to be told by the retailer that the consumer must make redress directly to the manufacturer, even if the manufacturer is out-of-state. This bill would require the retail seller to respond to the consumer's problem, and then in turn seek redress from the manufacturer. The retail seller is in a better position to communicate with the manufacturer than is the consumer. Language has been added to reinforce that liability remains with the manufacturer, not the retailer.

3. Should a retail seller under Section 1793.3 opt to refer a consumer to an independent repair facility, the retailer must first ascertain that the repair facility is willing to service the defective good. This provision should eliminate the situations in which a consumer is referred from one independent repair facility to another and never receives the necessary service.

4. Indigent consumers are often discouraged from seeking legal redress due to court costs. The addition of awards of 'costs and expenses' by the court to the consumer to cover such out-of-pocket expenses as filing fees, expert witness fees, marshall's fees, etc., should open the litigation process to everyone.

5. To date, air heaters and coolers have been exempted from the provisions of the Song-Beverly Act. The fact that such systems are comprised of component parts from several different manufacturers is cited as a reason for the exemption. However, other systems (burglar alarms, water heaters, refrigerators) have similar qualities and are not exempt. Furthermore, due to the possible multi-manufacturers involved, contractors that install such systems have expressed their feelings that manufacturers need to be held accountable for their products so that contractors are not left holding the bag. Lastly, with the advent of solar energy it is particularly important to have safeguards for consumers of solar air heaters and coolers which are also exempted at the present time.

SUPPORT: Los Angeles Co. Dept. of
Consumer Affairs
Calif. State Dept. of
Consumer Affairs
Los Angeles Co. Board of
Supervisors

OPPOSE: General Electric
Institute of Heating &
Air Conditioning
Industries, Inc.
Gaffers & Sattler, Inc.

Calif. Consumer Affairs Assn. NEUTRAL: Calif. Retailers Assn.
Calif. Home Economists Assn.
San Mateo Co. Office of Consumer Education

Consultant: Nancy Anton

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COUNTY OF LOS ANGELES
DEPARTMENT OF CONSUMER AFFAIRS

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JAMES A. HAYES
BAXTER WARD

May 27, 1978

Honorable Bill Lockyer
State Capitol
Sacramento, CA 95814

Dear Bill:

An original of the attached letter was sent to each of the "aye" votes on AB 3374 (Consumer Warranties) today.

Thank you again for agreeing to carry the bill and for your strong support during the Committee's discussion.

Sincerely,

SHIRLEY GOLDINGER
Director of Consumer Affairs

KATHLEEN BOURDEAU
Consumer Affairs Specialist

KB/sa

Enclosure

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COUNTY OF LOS ANGELES
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BAXTER WARD

May 27, 1978

Honorable _____
State Capitol
Sacramento, CA 95814

Dear Assemblyman _____:

AB 3374 (LOCKYER) CONSUMER WARRANTIES

Thank you for the affirmative vote you cast for AB 3374 when it was heard by the Assembly Labor, Employment and Consumer Affairs Committee this week. Because of your assistance in passing the bill out of committee, we have an opportunity to improve the Song-Beverly Warranty Act so that it is more responsive to the needs of both consumers and retailers. We appreciate your support of that effort.

Sincerely,

SHIRLEY GOLDINGER
Director of Consumer Affairs

KATHLEEN BOURDEAU
Consumer Affairs Specialist

KB/sa

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AMENDED IN ASSEMBLY JUNE 1, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 3374

Introduced by Assemblyman Lockyer

March 29, 1978

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

An act to amend Sections 1791, 1791.1, 1791.2, 1792, 1792.1, 1792.2, 1793, 1793.2, 1793.3, 1793.35, 1793.4, 1794, 1795.1, and 1795.5 of, to add Section 1795.8 to, and to add Article 4 (commencing with Section 1795.9) to Chapter 1 of Title 1.7 of Part 4 of Division 3 of, and to repeal Section 1795.1 of, the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 3374, as amended, Lockyer (L., E., & C.A.). Consumer warranties.

Existing law provides that unless disclaimed, a manufacturer's implied warranty of merchantability shall accompany every sale of consumer goods sold at retail.

This bill, in addition, would provide that unless disclaimed, a retail seller's implied warranty shall accompany every sale of consumer goods sold at retail.

Existing law provides that a manufacturer, distributor or retailer making express warranties as to consumer goods may not limit, modify, or disclaim implied warranties.

This bill would provide that a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given may not limit, modify or disclaim implied warranties.

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4th District Court of Appeal Division

Existing law provides for an action by a buyer of consumer goods as to a willful violation of specified consumer warranty provisions and provides for treble damages and attorneys' fees as to such an action.

This bill would delete the requirement that a violation be willful and would, in addition, provide for damages, rather than treble damages, and any other appropriate legal and equitable relief, and costs and attorneys' fees, as to such an action.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill would delete such exemption.

The bill also would require persons who install or service or repair new or used consumer goods to perform such work in a good and workmanlike manner.

It would recast provisions relating to cost of repair of non-conforming goods and also make other related changes.

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

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

SECTION 1. 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 clothing 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. Clothing and consumables, the retail sale of which is accompanied by an express warranty, shall be subject to the provisions of Section 1793.35.

(a) "Consumer goods" means any new product or part thereof that is used or bought for use primarily for

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1 personal, family, or household purposes, except for
2 clothing and consumables.

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

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

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

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

23 (f) "Independent repair or service facility" or
24 "independent serviceman service dealer" means any
25 individual, partnership, corporation, association, or other
26 legal entity, not an employee or subsidiary of a
27 manufacturer or distributor, which engages in the
28 business of servicing and repairing consumer goods.

29 (g) "Sale" means (1) the passing of title from the seller
30 to the buyer for a price, pursuant to the provisions of
31 Section 2401 of the Commercial Code, or (2) a
32 consignment for sale.

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

39 (i) "Place of business" means, for the purposes of any
40 retail seller that sells consumer goods by catalog or mail

4th District Court of Appeal Division 2.

1 order, the distribution point for such goods.
2 (j) "Return to the retail seller" means, for the
3 purposes of any retail seller that sells consumer goods by
4 catalog or mail order, the retail seller's place of business
5 as defined in subdivision (i).

6 (k) "Clothing" means any wearing apparel, worn for
7 any purpose, including under and outer garments, shoes
8 and accessories which are composed primarily of woven
9 material, natural or synthetic yarn, fiber, or leather or
10 similar fabric. Accessories composed of moving parts such
11 as, but not limited to, glasses and watches shall not be
12 considered clothing for purposes of this section.

13 (l) "Service contract" means a contract in writing to
14 perform, over a fixed period of time or for a specified
15 duration, services relating to the maintenance or repair
16 of a consumer product.

17 SEC. 2. Section 1791.1 of the Civil Code is amended
18 to read:

19 1791.1. As used in this chapter:

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

- 23 (1) Pass without objection in the trade under the
24 contract description.
- 25 (2) Are fit for the ordinary purposes for which such
26 goods are used.
- 27 (3) Are adequately contained, packaged, and labeled.
- 28 (4) Conform to the promises or affirmations of fact
29 made on the container or label.

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

37 (c) The duration of the implied warranty of
38 merchantability and where present the implied warranty
39 of fitness shall be coextensive in duration with an express
40 warranty which accompanies the consumer goods,

000021

1 provided the duration of the express warranty is
2 reasonable; but in no event shall such implied warranty
3 have a duration of less than 60 days nor more than one
4 year following the sale of new consumer goods to a retail
5 buyer. Where no duration for an express warranty is
6 stated with respect to consumer goods, or parts thereof,
7 the duration of the implied warranty shall be the
8 maximum period prescribed above.

9 (d) Any buyer of consumer goods injured by a breach
10 of the implied warranty of merchantability and where
11 applicable by a breach of the implied warranty of fitness
12 has the remedies provided in Chapter 6 (commencing
13 with Section 2601) and Chapter 7 (commencing with
14 Section 2701) of Division 2 of the Commercial Code, and,
15 in any action brought under such provisions, subdivision
16 (b) of Section 1794 of this chapter shall apply.

17 SEC. 2.5. Section 1791.2 of the Civil Code is amended
18 to read:

19 1791.2. (a) "Express warranty" means:

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

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

28 (b) It is not necessary to the creation of an express
29 warranty that formal words such as "warrant" or
30 "guarantee" be used or that a specific intention to make
31 a warranty be present, but an , but if such words are used
32 then an express warranty is created. An affirmation
33 merely of the value of the goods or a statement
34 purporting to be merely an opinion or commendation of
35 the goods does not create a warranty.

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

40 SEC. 3. Section 1792 of the Civil Code is amended to

A 4th District Court of Appeal Division 2

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1 read:
 2 1792. Unless disclaimed in the manner prescribed by
 3 this chapter, every sale of consumer goods that are sold
 4 at retail in this state shall be accompanied by the
 5 manufacturer's and the retail seller's implied warranty
 6 that the goods are merchantable. *The retail seller shall*
 7 *have a right of indemnity against the manufacturer in the*
 8 *amount of any liability under this section.*

9 SEC. 4. Section 1792.1 of the Civil Code is amended
 10 to read:

11 1792.1. Every sale of consumer goods that are sold at
 12 retail in this state by a manufacturer who has reason to
 13 know at the time of the retail sale that the goods are
 14 required for a particular purpose and that the buyer is
 15 relying on the manufacturer's skill or judgment to select
 16 or furnish suitable goods shall be accompanied by such
 17 manufacturer's implied warranty of fitness.

18 SEC. 5. Section 1792.2 of the Civil Code is amended
 19 to read:

20 1792.2. Every sale of consumer goods that are sold at
 21 retail in this state by a retailer or distributor who has
 22 reason to know at the time of the retail sale that the goods
 23 are required for a particular purpose, and that the buyer
 24 is relying on the retailer's or distributor's skill or
 25 judgment to select or furnish suitable goods shall be
 26 accompanied by such retailer's or distributor's implied
 27 warranty that the goods are fit for that purpose.

28 SEC. 6. Section 1793 of the Civil Code is amended to
 29 read:

30 1793. Nothing in this chapter shall affect the right of
 31 the manufacturer, distributor, or retailer to make express
 32 warranties with respect to consumer goods. However, a
 33 manufacturer, distributor, or retailer, in transacting a sale
 34 in which express warranties are given, may not limit,
 35 modify, or disclaim the implied warranties guaranteed by
 36 this chapter to the sale of consumer goods.

37 SEC. 7. Section 1793.2 of the Civil Code is amended
 38 to read:

39 1793.2. (a) Every manufacturer of consumer goods
 40 sold in this state and for which the manufacturer has

1 made an express warranty shall:

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

9 As a means of complying with paragraph (1) of this
 10 subdivision, a manufacturer shall be permitted to enter
 11 into warranty service contracts with independent service
 12 and repair facilities. The warranty service contracts may
 13 provide for a fixed schedule of rates to be charged for
 14 warranty service or warranty repair work, however, the
 15 rates fixed by such contracts shall be in conformity with
 16 the requirements of Section 793.3(e) 1793.3(c). The rates
 17 established pursuant to Section 1793.3(c), between the
 18 manufacturer and the independent service and repair
 19 facility, shall not preclude a good-faith discount which is
 20 reasonably related to reduced credit and general
 21 overhead cost factors arising from the manufacturer's
 22 payment of warranty charges direct to the independent.
 23 The warranty service contracts authorized by this
 24 paragraph shall not be executed to cover a period of time
 25 in excess of one year.

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

29 (b) Where such service and repair facilities are
 30 maintained in this state and service or repair of the goods
 31 is necessary because they do not conform with the
 32 applicable express warranties, service and repair shall be
 33 commenced within a reasonable time by the
 34 manufacturer or its representative in this state. ~~In the~~
 35 ~~ease of a defect, malfunction or failure to conform with~~
 36 ~~such express warranties, the goods must be serviced or~~
 37 ~~repaired without charge to the consumer.~~ Unless the
 38 buyer agrees in writing to the contrary, the goods must
 39 be serviced or repaired so as to conform to the applicable
 40 warranties within 30 days. Delay caused by conditions

4th District Court of Appeal Division 2

1 beyond the control of the manufacturer or his
2 representatives shall serve to extend this 30-day
3 requirement. Where such delay arises, conforming goods
4 shall be tendered as soon as possible following
5 termination of the condition giving rise to the delay.

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

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

37 SEC. 8. Section 1793.3 of the Civil Code is amended
38 to read:

39 1793.3. If the manufacturer of consumer goods sold in
40 this state for which the manufacturer has made an

000023

1 express warranty does not provide service and repair
2 facilities within this state pursuant to subdivision (a) of
3 Section 1793.2, the buyer of such manufacturer's
4 nonconforming goods may follow the course of action
5 prescribed in either subdivision (a), (b), or (c), below, as
6 follows:

7 (a) Return the nonconforming consumer goods to the
8 retail seller thereof for replacement, or for service or
9 repair in accordance with the terms and conditions of the
10 express warranty. The retail seller shall have the option
11 to either replace, service, or repair the nonconforming
12 goods. If the retail seller is unable to replace the
13 nonconforming goods or is unable to service or repair the
14 goods so as to effect conformity with applicable express
15 warranties, such retail seller shall reimburse the buyer in
16 an amount equal to the purchase price paid by the buyer,
17 less that amount directly attributable to use by the buyer
18 prior to discovery of the nonconformity.

19 (b) Return the nonconforming consumer goods to any
20 retail seller, within this state, of like goods of the same
21 manufacturer for replacement, or for service or repair.
22 The retail seller shall have the option to either replace,
23 service, or repair the nonconforming goods. retail seller
24 thereof. The retail seller shall do one of the following:

25 (1) Service or repair the nonconforming goods to
26 conform to the applicable warranty.

27 (2) Replace the nonconforming goods with goods that
28 are identical or reasonably equivalent to the warranted
29 goods.

30 (3) Direct the buyer to a reasonably close
31 independent repair or service facility willing to accept
32 service or repair under this section.

33 (4) Refund to the buyer the original purchase price
34 less that amount directly attributable to use by the buyer
35 prior to the discovery of the nonconformity.

36 In the event that option (1), (2), or (3) is exercised by
37 the retail seller, the retail seller or the independent
38 service or repair facility shall have a right of indemnity
39 against the manufacturer in the amount of any liability
40 under this subdivision.

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1 (b) Return the nonconforming consumer goods to any
2 retail seller of like goods of the same manufacturer within
3 this state who may do one of the following:

4 (1) Service or repair the nonconforming goods to
5 conform to the applicable warranty.

6 (2) Replace the nonconforming goods with goods that
7 are identical or reasonably equivalent to the warranted
8 goods.

9 (3) Direct the buyer to a reasonably close
10 independent repair or service facility willing to accept
11 service or repair under this section.

12 (4) Refund to the buyer the original purchase price
13 less that amount directly attributable to use by the buyer
14 prior to the discovery of the nonconformity.

15 (c) Secure the services of an independent repair or
16 service facility for the service or repair of the
17 nonconforming consumer goods, when service or repair
18 of the goods can be economically accomplished. In that
19 event the manufacturer shall be liable to the buyer, or to
20 the independent serviceman upon an assignment of the
21 buyer's rights, for the actual and reasonable cost of
22 service and repair, including any cost for parts and any
23 reasonable cost of transporting the goods or parts, plus a
24 reasonable profit. The independent service or repair
25 facility shall have a right of indemnity against the
26 manufacturer in the amount of any liability under this
27 subdivision. It shall be a rebuttable presumption affecting
28 the burden of producing evidence that the reasonable
29 cost of service or repair is an amount equal to that which
30 is charged by the independent serviceman for like
31 services or repairs rendered to service or repair
32 customers who are not entitled to warranty protection.
33 Any waiver of the liability of a manufacturer shall be void
34 and unenforceable.

35 The course of action prescribed in this subdivision shall
36 be available to the buyer only after the buyer has
37 followed the course of action prescribed in either
38 subdivision (a) or (b) and such course of action has not
39 furnished the buyer with appropriate relief. In no event,
40 shall the provisions of this subdivision be available to the

1 buyer with regard to consumer goods with a wholesale
2 price to the retailer of less than fifty dollars (\$50). In no
3 event shall the buyer be responsible or liable for service
4 or repair costs charged by the independent repair or
5 service facility which accepts service or repair of
6 nonconforming consumer goods under this section. Such
7 independent repair or service facility shall only be
8 authorized to hold the manufacturer liable for such costs.

9 (d) A retail seller to which any nonconforming
10 consumer good is returned pursuant to subdivision (a) or
11 (b) shall have the option of providing service or repair
12 itself or directing the buyer to a reasonably close
13 independent repair or service facility capable of handling
14 the repairs and willing to accept service or repair under
15 this section. In the event the retail seller directs the buyer
16 to an independent repair or service facility, the
17 manufacturer shall be liable for the reasonable cost of
18 repair services in the manner provided in subdivision (c).

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

39 (f) The manufacturer of consumer goods with a
40 wholesale price to the retailer of fifty dollars (\$50) or

4th District Court of Appeal Division 2

1 more for which the manufacturer has made express
2 warranties shall provide written notice to the buyer of
3 the courses of action available to him under subdivision
4 (a), (b), or (c).

5 *SEC. 8.5. Section 1793.35 of the Civil Code is amended*
6 *to read:*

7 1793.35. (a) Where the retail sale of ~~soft goods~~
8 ~~clothing~~ or consumables is accompanied by an express
9 warranty and such items do not conform with the terms
10 of the express warranty, the buyer thereof may return the
11 goods within 30 days of purchase or the period specified
12 in the warranty, whichever is greater. The manufacturer
13 may, in the express warranty, direct the purchaser to
14 return nonconforming goods to a retail seller of like goods
15 of the same manufacturer for replacement.

16 (b) When ~~soft goods clothing~~ or consumables are
17 returned to a retail seller for the reason that they do not
18 conform to an express warranty, the retailer shall replace
19 the nonconforming goods where the manufacturer has
20 directed replacement in the express warranty. In the
21 event the manufacturer has not directed replacement in
22 the express warranty, the retailer may replace the
23 nonconforming goods or reimburse the buyer in an
24 amount equal to the purchase price paid by the buyer for
25 the goods, at the option of the retailer. Costs of
26 reimbursement or replacement are recoverable by a
27 retailer from the manufacturer in the manner provided
28 in Section 1793.5.

29 *SEC. 9. Section 1793.4 of the Civil Code is amended*
30 *to read:*

31 1793.4. Where an option is exercised in favor of
32 service and repair under Section 1793.3, such service and
33 repair must be ~~performed without charge and~~
34 commenced within a reasonable time, and, unless the
35 buyer agrees in writing to the contrary, goods
36 conforming to the applicable express warranties shall be
37 tendered within 30 days. Delay caused by conditions
38 beyond the control of the retail seller or his
39 representative shall serve to extend this 30-day
40 requirement. Where such a delay arises, conforming

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1 goods shall be tendered as soon as possible following
2 termination of the condition giving rise to the delay.

3 *SEC. 10. Section 1794 of the Civil Code is amended to*
4 *read:*

5 1794. Any buyer of consumer goods injured by a
6 *willful* violation of the provisions of this chapter or a
7 *willful* violation of the implied or express warranty or
8 service contract may bring an action for the recovery of
9 ~~damages three times the amount of actual damages~~ and
10 other legal and equitable relief, and, if the buyer finally
11 prevails in any action brought under this section, he or
12 she may be allowed by the court to recover as part of the
13 judgment a sum equal to the aggregate amount of ~~cost~~
14 ~~costs~~ and expenses (including attorney's fees based on
15 actual time expended) determined by the court to have
16 been reasonably incurred by the plaintiff for or in
17 connection with the commencement and prosecution of
18 such action, unless the court in its discretion shall
19 determine that such an award of attorneys' fees would be
20 inappropriate.

21 *SEC. 11. Section 1795.1 of the Civil Code is repealed.*
22 *amended to read:*

23 1795.1. ~~No requirement of this~~ *This* chapter shall
24 apply to any equipment or ~~any part thereof which is a~~
25 ~~mechanical, electrical, or thermal~~ component of a system
26 designed to heat, cool, or otherwise condition air, ~~but~~
27 ~~shall not apply to the system as a whole~~ where such a
28 system ~~shall become~~ *becomes* a fixed part of a structure;
29 ~~unless an express warranty respecting such component~~
30 ~~has been made by the retailer thereof, in which event it~~
31 ~~shall be the duty of the retailer to give effect to the~~
32 ~~provisions of this chapter.~~

33 *SEC. 12. Section 1795.5 of the Civil Code is amended*
34 *to read:*

35 1795.5. Notwithstanding the provisions of subdivision
36 (a) of Section 1791 defining consumer goods to mean
37 "new" goods, the obligation of a distributor or retail seller
38 of used consumer goods shall be the same as that imposed
39 on manufacturers under this chapter in a sale in which an
40 express warranty is given, except if a distributor or retail

A 4th District Court of Appeals Division

1 seller of used consumer goods makes express warranties
2 with respect to used goods that are sold in this state; the
3 obligation of such distributor or retail seller shall be the
4 same as that imposed on the manufacturer under this
5 chapter, except:

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

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

16 (c) The duration of the implied warranty of
17 merchantability and where present the implied warranty
18 of fitness with respect to used consumer goods sold in this
19 state, where the sale is accompanied by an express
20 warranty, shall be coextensive in duration with an express
21 warranty which accompanies the consumer goods,
22 provided the duration of the express warranty is
23 reasonable, but in no event shall such implied warranties
24 have a duration of less than 30 days nor more than three
25 months following the sale of used consumer goods to a
26 retail buyer. Where no duration for an express warranty
27 is stated with respect to such goods, or parts thereof, the
28 duration of the implied warranties shall be the maximum
29 period prescribed above.

30 (d) The obligation of the distributor or retail seller who
31 makes express warranties with respect to used goods that
32 are sold in this state, shall extend to the sale of all such
33 used goods, regardless of when such goods may have been
34 manufactured.

35 SEC. 13. Section 1795.8 is added to the Civil Code, to
36 read:

37 1795.8. Any individual, partnership, corporation,
38 association, or other legal relationship which engages in
39 the business of installing new or used consumer goods,
40 has a duty to the buyer to install them in a good and

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1 workmanlike manner.
2 SEC. 14. Article 4 (commencing with Section 1795.9)
3 is added to Chapter 1 of Title 1.7 of Part 4 of Division 3
4 of the Civil Code, to read:

5
6 Article 4. Service and Repair Warranties
7

8 1795.9. Any individual, partnership, corporation,
9 association, or other legal relationship which engages in
10 the business of providing service or repair to new or used
11 consumer goods has a duty to the purchaser to perform
12 those services in a good and workmanlike manner.

00324
4th District Court of Appeal Division 2.

ASSEMBLY THIRD READING

AB 3374 (Lockyer) As Amended: 1 June 1978

ASSEMBLY ACTIONS:

FILE COPY

COMMITTEE L., E., & C. A. VOTE 11-0 COMMITTEE VOTE

Ayes:

Ayes:

Nays:

Nays:

DIGEST

The existing Song-Beverly Consumer Warranty Act defines consumer goods for the purposes of the act.

This bill broadens the definition of consumer goods to include any new product or part used and bought primarily for personal, family, or household use, except for clothing and consumables.

The Song-Beverly Act applies to warranties of merchantability by manufacturers.

This bill extends the implied warranty to retailers and includes language to reinforce the retailer's right of recovery from the manufacturer.

Existing law provides for an action by a buyer of consumer goods as to a willful violation of specified consumer warranty provisions and provides for treble damages and attorneys fees as to such action.

This bill additionally provides for any other appropriate legal and equitable relief, costs, and attorneys' fees.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill deletes that exemption.

The bill also requires a person who installs or services or repairs new or used consumer goods to perform such work in a good and workmanlike manner.

FISCAL EFFECT

None

ASSEMBLY OFFICE OF RESEARCH

AB 3374

12/am
6/8/78

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LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
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**CHIEF ADMINISTRATIVE OFFICER
COUNTY OF LOS ANGELES**

713 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012
874-1101

Suite 321, 11th & L Building
Sacramento, California 95814
Phone: 441-8888



HARRY L. HUFFORD
CHIEF ADMINISTRATIVE OFFICER

June 21, 1978

MEMBERS OF THE BOARD
PETER F. SCHABARUM
CHAIRMAN
KENNETH HAHN
EDMUND D. EDELMAN
JAMES A. HAYES
BAXTER WARD

Honorable Alfred H. Song
Chairman, Senate Judiciary
Committee
State Capitol, Room 3070
Sacramento, California 95814

Re: Assembly Bill 3374 (Lockyer), relating to
Consumer Warranties

Dear Senator Song:

The Board of Supervisors of the County of Los Angeles supports Assembly Bill 3374 (Lockyer), relating to consumer warranties. This bill was introduced at the request of Los Angeles County and is included in our County-Sponsored Legislative Program for 1978. AB 3374 is scheduled for hearing before your committee on Tuesday, June 27.

The major problem in the home furnishings field is defective merchandise. The Los Angeles County Department of Consumer Affairs has processed over 600 consumer complaints dealing with such warranties. This is a significant volume, and one that might be more easily dealt with improved legislation.

Current law provides for implied warranties on consumer goods with the exception of consumables, "soft goods and air heating and cooling systems." Confusion over defining what is meant by "soft goods" has mitigated the effect of the Warranty Act. We believe it was the Legislature's intent to exclude only clothing when it employed the term "soft goods." AB 3374 would specifically remove heater and air cooler exemptions and modify the "soft goods" exemption to mean only clothing.

In addition, the bill:

1. Deletes the requirement that violations of the act's warranty provisions be willful. Also deletes the provision for collecting treble damages (this makes the law consistent with the Federal Magnuson-Moss Warranty Act);

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June 21, 1978

2. Requires persons who install, service, or repair new or used consumer goods to perform such work in a "good and workmanlike manner"; and
3. Requires a retailer's implied warranty, as well as the manufacturer's, to accompany the sale of all consumer goods.

Assembly Bill 3374 is specifically responsive to the persistent difficulties we have encountered in attempting to resolve consumer/business warranty disputes.

It is for these reasons that the Board of Supervisors of the County of Los Angeles supports AB 3374. If you have any further questions regarding our position on this measure, please let us know.

Very truly yours,



Marvin Freedman
Legislative Representative

MF:ds

cc: Each Member, Senate Judiciary
Committee

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**COUNTY OF LOS ANGELES
DEPARTMENT OF CONSUMER AFFAIRS**

8-96 HALL OF ADMINISTRATION 500 W TEMPLE ST LOS ANGELES CALIFORNIA 90017 (213) 974-1450

SHIRLEY GOLDINGER
Director

June 21, 1978

MEMBERS OF THE BOARD

PETER F. SCHABARUM
KENNETH HAHN
EDMUND D. EDELMAN
JAMES A. HAYES
BAXTER WARD

Honorable Alfred H. Song, Chairman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Dear Senator Song:

AB 3374 (LOCKYER) CONSUMER WARRANTIES

We are writing to ask for your "aye" vote when AB 3374 comes before the Senate Judiciary Committee on June 27, 1978.

This bill strengthens and clarifies the Song-Beverly Warranty Act. Because of limitations in the Act, consumers are denied certain protections and remedies when many types of consumer products fail to perform properly. Specifically, it appears that products such as furniture, camping gear, sporting equipment, draperies, luggage and others are not subject to the Act's implied warranty provisions. Air heating and cooling systems are exempt from the entire Act. What this means to consumers is that if such products prove to be defective, they have no recourse under Song-Beverly. In two years our department alone has processed nearly 2,000 consumer complaints related to defective merchandise and improper repairs. The Los Angeles County Department of Consumer Affairs, and the Los Angeles County Board of Supervisors feel strongly that there is no justification for exempting these or other consumer products from a law which essentially and simply says a product must perform as intended, for a reasonable period of time. We are equally supportive of the bill's clarification of retailer and manufacturer responsibility for non-conforming goods.

We appreciate your consideration of a bill which quite simply codifies every consumer's right to purchase non-defective merchandise and service. Thank you.

Sincerely,

SHIRLEY GOLDINGER
Director of Consumer Affairs

Kathleen Bourdeau
KATHLEEN BOURDEAU
Consumer Affairs Specialist

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KB/ea

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California Consumer Affairs Association

500 West Temple Street, Room E-96, Los Angeles, CA 91001

NORTHERN DIVISION

June 23, 1978

Counties:

- Alameda
- Chico
- Fresno
- Mariposa
- Monterey
- Sacramento
- San Mateo
- Santa Clara
- Santa Cruz
- Stanislaus
- Sutter
- Tre County

Cities:

- Merced

SOUTHERN DIVISION

Counties:

- Los Angeles
- Orange
- San Bernardino
- Ventura

Cities:

- Cerritos
- Long Beach
- San Diego
- Santa Monica

TO: Members, Senate Judiciary Committee

FROM: Kathleen Bourdeau *Kathleen Bourdeau*
Legislative Chairperson, Southern Division

SUBJECT: AB 3374 (Lockyer) CONSUMER WARRANTIES

On June 27, 1978 AB 3374 will come before the Senate Judiciary Committee for hearing. On behalf of our Association's 26 County and City members, we urge your "aye" vote at that time, as well as your resistance to a special interest amendment which may be suggested.

AB 3374 strengthens and clarifies California's exemplary Song-Beverly Warranty Act. The Act, which sets forth retailer and manufacturer responsibilities with regard to the performance of various consumer goods, currently exempts many types of products from its provisions. Such exemptions include air heating and cooling systems, draperies, furniture and other goods constructed from pliable materials.

The California Consumer Affairs Association feels strongly that there is no justification for exempting any consumer product from an Act which quite simply says goods must perform as intended for a minimum period of time. We are well aware that the manufacturing process of many consumer products is multi-faceted and may involve more than one manufacturer. This fact cannot be entertained as an appropriate argument against the imposition of implied warranties however. Just because a good is produced and distributed in a complicated manner should not relieve retailers and manufacturers from a fundamental obligation to sell non-defective merchandise. We urge you to resist efforts to maintain exemptions for draperies and air heating and cooling units.

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REPRESENTING MORE THAN THIRTEEN MILLION CALIFORNIA CONSUMERS

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Page 2
AB 3374 (Lockyer)

We are particularly concerned about an exemption for the drapery industry because of the large number of consumer complaints that are consistently filed concerning defective drapes. The Los Angeles and Orange County Departments of Consumer Affairs each receive close to 100 drapery-related complaints a year. These frequent complaints are difficult to resolve because draperies are not generally sold with written warranties and have been exempt from the Act's implied warranty provisions. AB 3374, by expanding the definition of consumer goods, deals with this persistent consumer problem by making drapery retailers and manufacturers responsible for the "merchantability" and "fitness" of the drapes they sell for a minimum of 60 days. This hardly seems burdensome and will at least serve to protect consumers for a certain period of time against the purchase of defective or improperly constructed drapes. To allow a special interest drapery exemption is to relieve retailers and manufacturers of responsibility for the goods they sell. That is blatantly unfair to consumers, and clearly inconsistent with the basic intent of the Song-Beverly Warranty Act. We ask for your help in preserving a consumer's basic right to purchase non-defective goods and services.

Thank you for considering our views on this important legislation.

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SENATE COMMITTEE ON JUDICIARY

1977-78 REGULAR SESSION

AB 3374 (Lockyer)
As amended June 1
Civil Code

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CONSUMER WARRANTIES

HISTORY

Source: Author

Prior Legislation: None

Support: Dept. of Consumer Affairs; L.A. County Board of Supervisors; L.A. County Dept. of Consumer Affairs; Calif. Home Economists Ass'n.; Calif. Consumer Affairs Ass'n.

Opposition: No Known

PURPOSE

The Song-Beverly Consumer Warranty Act provides legal remedies which consumers may use to enforce the terms of express warranties given on the products that they buy.

This bill contains a series of amendments to the Act which would clarify language, eliminate ambiguities, and expand its scope in minor ways.

The purpose of the bill is to make the Song-Beverly Consumer Warranty Act a more effective tool for the redress of grievances.

COMMENT

1. Existing law

Under the Song-Beverly Consumer Warranty Act a warrantor must either supply repair and

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service facilities in California to handle warranty work, or he must reimburse his retailers for their expense in servicing warranties. Should the maker of an express warranty fail to do this, he may be liable for the actual expenses incurred by the consumer or retailer in obtaining those repairs promised by the warranty. If that failure be wilfull, triple damages and attorneys' fees may be collected.

2. Scope of the Act

The Act presently covers new mobilehomes, motor vehicles, appliances, and any product covered by an express warranty which is purchased for personal, family, or household purposes. "Soft goods" and "consumables" are excluded from many of the Act's provisions.

Under this bill the Act would apply to any new product purchased primarily for personal, family, or household purposes. "Consumables" would continue to be excluded, but the present exclusion for "soft goods" would be limited to "clothing."

The significance of this change is that soft goods such as drapes and carpeting would now be treated like any other consumer product under the terms of the Act.

3. Implied warranty obligations

The Act presently provides that goods not sold "as is" are accompanied by the manufacturer's implied warranty of merchantability, and that that warranty may not be disclaimed.

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This bill would provide that such goods would also be accompanied by the retailer's implied warranty of merchantability, and the bill would also give the retailer a "right of indemnity" against the manufacturer in the amount of any liability resulting to the retailer as a result of that implied warranty.

4. Obligations of retailers

Under the present Act if a manufacturer fails to establish service and repair facilities to handle warranty work, the consumer may go to the retailer which sold the product, and that retailer has an obligation to repair the product, replace it, or reimburse the consumer. The consumer may also go to any other retailer which sells the same product by the same manufacturer, and that retailer is obligated either to repair or replace the defective product. (The Act gives the retailer the right to make good his losses from the manufacturer.)

This bill would strike the present language, and would state the duties of the retailer which sold the product and the retailer which did not in identical terms -- to repair, replace, make a refund, or send the consumer to an independent service facility. The bill says that the retailer which sold the product "shall" do one of those four things; it says that a retailer which did not sell the product "may" do one of the four.

The effect of the word "may" is not clear. Are the legal obligations of the retailer-seller different from those of other retailers? If so, how? Does the word "may" mean that a retailer which did not sell the product has no legal obligation? If so, why speak of such a retailer in the bill?

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SHOULD NOT THIS BE CLARIFIED?

5. Penalties

The present Act provides that a wilfull violation of its provisions may result in triple damages and the awarding of attorney's fees. The Act provides for the enforcement of the terms of a warranty, but not of a service contract.

This bill would add costs to the potential penalty, and would provide that it could be imposed for a violation of the terms of a warranty or a service contract.

6. Heating and air conditioning equipment exemption

As presently drafted, heating and air conditioning equipment which becomes a fixed part of a structure is specifically exempt from the coverage of the Act.

This bill would retain the exemption for the heating or air conditioning system as a whole, but would provide that mechanical, electrical, or thermal components of the system would be covered by the Act.

Proponents of the exemption justify it by saying that a heating or air conditioning system, unlike other products, is put together by a contractor (regulated under the Contractors' State License Law) and not by the manufacturer who gives the warranty. Thus, the warrantor should not be responsible for the system as a whole.

7. Good and workmanlike standard

The present Act is silent as to a statutory standard for installation or repair work.

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This bill would provide that anyone engaged in installing consumer goods or in repairing them has the duty to perform those services in a "good and workmanlike manner."

8. Suggested amendment

To clarify the definition of "clothing" the following amendment should be made:

On page 4, lines 10 to 12, strike out the sentence beginning "Accessories composed of moving parts . . ."

9. Technical amendments

On page 5, lines 15 and 16, strike out "sub-division (b) of"

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

On page 13, line 10, strike out "finally"

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**JAN RAYMOND
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
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AMENDED IN SENATE AUGUST 7, 1978

AMENDED IN ASSEMBLY JUNE 1, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 3374

Introduced by Assemblyman Lockyer

March 29, 1978

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

An act to amend Sections 1791, 1791.1, 1791.2, 1792, 1792.1, 1792.2, 1793, 1793.2, 1793.3, 1793.35, 1793.4, 1794, 1795.1, and 1795.5 of, to add Section 1795.8 to, and to add Article 4 (commencing with Section 1795.9) to Chapter 1 of Title 1.7 of Chapter 2 (commencing with Section 1796) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 3374, as amended, Lockyer (L., E., & C.A.). Consumer warranties.

Existing law provides that unless disclaimed, a manufacturer's implied warranty of merchantability shall accompany every sale of consumer goods sold at retail.

This bill, in addition, would provide that unless disclaimed, a retail seller's implied warranty shall accompany every sale of consumer goods sold at retail.

Existing law provides that a manufacturer, distributor or retailer making express warranties as to consumer goods may not limit, modify, or disclaim implied warranties.

This bill would provide that a manufacturer, distributor,

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retailer, in transacting a sale in which express warranties are given may not limit, modify or disclaim implied warranties. Existing law provides for an action by a buyer of consumer goods as to a willful violation of specified consumer warranty provisions and provides for treble damages and attorneys' fees as to such an action.

This bill would, in addition, provide for any other appropriate legal and equitable relief, and costs and attorneys' fees, as to such an action.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill would delete such exemption.

The bill also would require persons who install or service or repair new or used consumer goods to perform such work in a good and workmanlike manner.

It would recast provisions relating to cost of repair of non-conforming goods and also make other related changes.

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 1791 of the Civil Code is
2 amended to read:

3 1791. As used in this chapter:

4 (a) "Consumer goods" means any new product or part
5 thereof that is used or bought for use primarily for
6 personal, family, or household purposes, except for
7 clothing and consumables.

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

15 (c) "Manufacturer" means any individual,
16 partnership, corporation, association, or other legal
17 relationship which manufactures, assembles, or produces

1 consumer goods.

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

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

11 (f) "Independent repair or service facility" or
12 "independent service dealer" means any individual,
13 partnership, corporation, association, or other legal
14 entity, not an employee or subsidiary of a manufacturer
15 or distributor, which engages in the business of servicing
16 and repairing consumer goods.

17 (g) "Sale" means (1) the passing of title from the seller
18 to the buyer for a price, or (2) a consignment for sale.

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

25 (i) "Place of business" means, for the purposes of any
26 retail seller that sells consumer goods by catalog or mail
27 order, the distribution point for such goods.

28 (j) "Return to the retail seller" means, for the
29 purposes of any retail seller that sells consumer goods by
30 catalog or mail order, the retail seller's place of business,
31 as defined in subdivision (i).

32 (k) "Clothing" means any wearing apparel, worn for
33 any purpose, including under and outer garments, shoes,
34 and accessories which are composed primarily of woven
35 material, natural or synthetic yarn, fiber, or leather or
36 similar fabric. Accessories composed of moving parts such
37 as, but not limited to, glasses and watches shall not be
38 considered clothing for purposes of this section.

39 (c) "Clothing" means any wearing apparel, worn for
40 any purpose, including under and outer garments, shoes,

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1 and accessories composed primarily of woven material,
2 natural or synthetic yarn, fiber, or leather or similar
3 fabric.

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

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

15 (f) "Independent repair or service facility" or
16 "independent service dealer" means any individual,
17 partnership, corporation, association, or other legal
18 entity, not an employee or subsidiary of a manufacturer
19 or distributor, which engages in the business of servicing
20 and repairing consumer goods.

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

25 (h) "Place of business" means, for the purposes of any
26 retail seller that sells consumer goods by catalog or mail
27 order, the distribution point for such goods.

28 (i) "Retail seller," "seller," or "retailer" means any
29 individual, partnership, corporation, association, or other
30 legal relationship which engages in the business of selling
31 consumer goods to retail buyers.

32 (j) "Return to the retail seller" means, for the
33 purposes of any retail seller that sells consumer goods by
34 catalog or mail order, the retail seller's place of business,
35 as defined in subdivision (h).

36 (k) "Sale" means (1) the passing of title from the seller
37 to the buyer for a price, or (2) a consignment for sale.

38 (l) "Service contract" means a contract in writing to
39 perform, over a fixed period of time or for a specified
40 duration, services relating to the maintenance or repair

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1 of a consumer product.

2 SEC. 2. Section 1791.1 of the Civil Code is amended
3 to read:

4 1791.1. As used in this chapter:

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

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

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

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

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

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

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

34 (d) Any buyer of consumer goods injured by a breach
35 of the implied warranty of merchantability and where
36 applicable by a breach of the implied warranty of fitness
37 has the remedies provided in Chapter 6 (commencing
38 with Section 2601) and Chapter 7 (commencing with
39 Section 2701) of Division 2 of the Commercial Code, and,
40 in any action brought under such provisions, subdivision

46 District of Appeals

1 ~~(b)~~ of Section 1794 of this chapter shall apply.
2 SEC. 2.5. Section 1791.2 of the Civil Code is amended
3 to read:

4 1791.2. (a) "Express warranty" means:
5 (1) A written statement arising out of a sale to the
6 consumer of a consumer good pursuant to which the
7 manufacturer, distributor, or retailer undertakes to
8 preserve or maintain the utility or performance of the
9 consumer good or provide compensation if there is a
10 failure in utility or performance; or

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

13 (b) It is not necessary to the creation of an express
14 warranty that formal words such as "warrant" or
15 "guarantee" be used, but if such words are used then an
16 express warranty is created. An affirmation merely of the
17 value of the goods or a statement purporting to be merely
18 an opinion or commendation of the goods does not create
19 a warranty.

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

24 SEC. 3. Section 1792 of the Civil Code is amended to
25 read:

26 1792. Unless disclaimed in the manner prescribed by
27 this chapter, every sale of consumer goods that are sold
28 at retail in this state shall be accompanied by the
29 manufacturer's and the retail seller's implied warranty
30 that the goods are merchantable. The retail seller shall
31 have a right of indemnity against the manufacturer in the
32 amount of any liability under this section.

33 SEC. 4. Section 1792.1 of the Civil Code is amended
34 to read:

35 1792.1. Every sale of consumer goods that are sold at
36 retail in this state by a manufacturer who has reason to
37 know at the time of the retail sale that the goods are
38 required for a particular purpose and that the buyer is
39 relying on the manufacturer's skill or judgment to select
40 or furnish suitable goods shall be accompanied by such

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1 manufacturer's implied warranty of fitness.

2 SEC. 5. Section 1792.2 of the Civil Code is amended
3 to read:

4 1792.2. Every sale of consumer goods that are sold at
5 retail in this state by a retailer or distributor who has
6 reason to know at the time of the retail sale that the goods
7 are required for a particular purpose, and that the buyer
8 is relying on the retailer's or distributor's skill or
9 judgment to select or furnish suitable goods shall be
10 accompanied by such retailer's or distributor's implied
11 warranty that the goods are fit for that purpose.

12 SEC. 6. Section 1793 of the Civil Code is amended to
13 read:

14 1793. Nothing in this chapter shall affect the right of
15 the manufacturer, distributor, or retailer to make express
16 warranties with respect to consumer goods. However, a
17 manufacturer, distributor, or retailer, in transacting a sale
18 in which express warranties are given, may not limit,
19 modify, or disclaim the implied warranties guaranteed by
20 this chapter to the sale of consumer goods.

21 SEC. 7. Section 1793.2 of the Civil Code is amended
22 to read:

23 1793.2. (a) Every manufacturer of consumer goods
24 sold in this state and for which the manufacturer has
25 made an express warranty shall:

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

33 As a means of complying with paragraph (1) of this
34 subdivision, a manufacturer shall be permitted to enter
35 into warranty service contracts with independent service
36 and repair facilities. The warranty service contracts may
37 provide for a fixed schedule of rates to be charged for
38 warranty service or warranty repair work, however, the
39 rates fixed by such contracts shall be in conformity with
40 the requirements of *subdivision (c) of Section 1793.3(e)*.

4th District Court of Appeal Division 2

1 1793.3. The rates established pursuant to *subdivision (c)*
 2 *of Section 1793.3(e), 1793.3*, between the manufacturer
 3 and the independent service and repair facility, shall not
 4 preclude a good-faith discount which is reasonably
 5 related to reduced credit and general overhead cost
 6 factors arising from the manufacturer's payment of
 7 warranty charges direct to the independent *service and*
 8 *repair facility*. The warranty service contracts authorized
 9 by this paragraph shall not be executed to cover a period
 10 of time in excess of one year.

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

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

28 (c) It shall be the duty of the buyer to deliver
 29 nonconforming goods to the manufacturer's service and
 30 repair facility within this state, unless, due to reasons of
 31 size and weight, or method of attachment, or method of
 32 installation, or nature of the nonconformity, such
 33 delivery cannot reasonably be accomplished. Should the
 34 buyer be unable to effect return of nonconforming goods
 35 for any of the above reasons, he shall notify the
 36 manufacturer or its nearest service and repair facility
 37 within the state. Written notice of nonconformity to the
 38 manufacturer or its service and repair facility shall
 39 constitute return of the goods for purposes of this section.
 40 Upon receipt of such notice of nonconformity the

1 manufacturer shall, at its option, service or repair the
 2 goods at the buyer's residence, or pick up the goods for
 3 service and repair, or arrange for transporting the goods
 4 to its service and repair facility. All reasonable costs of
 5 transporting the goods when, pursuant to the above, a
 6 buyer is unable to effect return shall be at the
 7 manufacturer's expense. The reasonable costs of
 8 transporting nonconforming goods after delivery to the
 9 service and repair facility until return of the goods to the
 10 buyer shall be at the manufacturer's expense.

11 (d) Should the manufacturer or its representative in
 12 this state be unable to service or repair the goods to
 13 conform to the applicable express warranties ~~in two~~ after
 14 a reasonable number of attempts, the manufacturer shall
 15 either replace the goods or reimburse the buyer in an
 16 amount equal to the purchase price paid by the buyer,
 17 less that amount directly attributable to use by the buyer
 18 prior to the discovery of the nonconformity.

19 SEC. 8. Section 1793.3 of the Civil Code is amended
 20 to read:

21 1793.3. If the manufacturer of consumer goods sold in
 22 this state for which the manufacturer has made an
 23 express warranty does not provide service and repair
 24 facilities within this state pursuant to subdivision (a) of
 25 Section 1793.2, the buyer of such manufacturer's
 26 nonconforming goods may follow the course of action
 27 prescribed in either subdivision (a), (b), or (c), below, as
 28 follows:

29 (a) Return the nonconforming consumer goods to the
 30 retail seller thereof. The retail seller shall do one of the
 31 following:

32 (1) Service or repair the nonconforming goods to
 33 conform to the applicable warranty.

34 ~~(2)~~ (2) Direct the buyer to a reasonably close
 35 independent repair or service facility willing to accept
 36 service or repair under this section.

37 (3) Replace the nonconforming goods with goods that
 38 are identical or reasonably equivalent to the warranted
 39 goods.

40 ~~(3)~~ Direct the buyer to a reasonably close

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1 independent repair or service facility willing to accept
 2 service or repair under this section.
 3 (4) Refund to the buyer the original purchase price
 4 less that amount directly attributable to use by the buyer
 5 prior to the discovery of the nonconformity.
 6 In the event that option (1), (2), or (3) is exercised by
 7 the retail seller, the retail seller or the independent
 8 service or repair facility shall have a right of indemnity
 9 against the manufacturer in the amount of any liability
 10 under this subdivision.
 11 (b) Return the nonconforming consumer goods to any
 12 retail seller of like goods of the same manufacturer within
 13 this state who may do one of the following:
 14 (1) Service or repair the nonconforming goods to
 15 conform to the applicable warranty.
 16 ~~(2)~~ (2) Direct the buyer to a reasonably close
 17 independent repair or service facility willing to accept
 18 service or repair under this section.
 19 (3) Replace the nonconforming goods with goods that
 20 are identical or reasonably equivalent to the warranted
 21 goods.
 22 ~~(3)~~ Direct the buyer to a reasonably close
 23 independent repair or service facility willing to accept
 24 service or repair under this section.
 25 (4) Refund to the buyer the original purchase price
 26 less that amount directly attributable to use by the buyer
 27 prior to the discovery of the nonconformity.
 28 (c) Secure the services of an independent repair or
 29 service facility for the service or repair of the
 30 nonconforming consumer goods, when service or repair
 31 of the goods can be economically accomplished. The
 32 independent service or repair facility shall have a right of
 33 indemnity against the manufacturer in the amount of any
 34 liability under this subdivision. In that event the
 35 manufacturer shall be liable to the buyer, or to the
 36 independent repair or service facility upon an
 37 assignment of the buyer's rights, for the actual and
 38 reasonable cost of service and repair, including any cost
 39 for parts and any reasonable cost of transporting the
 40 goods or parts, plus a reasonable profit. It shall be a

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1 rebuttable presumption affecting the burden of
 2 producing evidence that the reasonable cost of service or
 3 repair is an amount equal to that which is charged by the
 4 independent ~~serviceman~~ service dealer for like services
 5 or repairs rendered to service or repair customers who
 6 are not entitled to warranty protection. Any waiver of the
 7 liability of a manufacturer shall be void and
 8 unenforceable.
 9 The course of action prescribed in this subdivision shall
 10 be available to the buyer only after the buyer has
 11 followed the course of action prescribed in either
 12 subdivision (a) or (b) and such course of action has not
 13 furnished the buyer with appropriate relief. In no event,
 14 shall the provisions of this subdivision be available to the
 15 buyer with regard to consumer goods with a wholesale
 16 price to the retailer of less than fifty dollars (\$50). In no
 17 event shall the buyer be responsible or liable for service
 18 or repair costs charged by the independent repair or
 19 service facility which accepts service or repair of
 20 nonconforming consumer goods under this section. Such
 21 independent repair or service facility shall only be
 22 authorized to hold the manufacturer liable for such costs.
 23 (d) A retail seller to which any nonconforming
 24 consumer good is returned pursuant to subdivision (a) or
 25 (b) shall have the option of providing service or repair
 26 itself or directing the buyer to a reasonably close
 27 independent repair or service facility and willing to
 28 accept service or repair under this section. In the event
 29 the retail seller directs the buyer to an independent
 30 repair or service facility, the manufacturer shall be liable
 31 for the reasonable cost of repair services in the manner
 32 provided in subdivision (c).
 33 (e) In the event a buyer is unable to return
 34 nonconforming goods to the retailer due to reasons of size,
 35 and weight, or method of attachment, or method of
 36 installation, or nature of the nonconformity, the buyer
 37 shall give notice of the nonconformity to the retailer.
 38 Upon receipt of such notice of nonconformity the retailer
 39 shall, at its option, service or repair the goods at the
 40 buyer's residence, or pick up the goods for service or

4th District Court of Appeal Division 2

1 repair, or arrange for transporting the goods to its place
 2 of business. The reasonable costs of transporting the
 3 goods shall be at the retailer's expense. The retailer shall
 4 be entitled to recover all such reasonable costs of
 5 transportation from the manufacturer pursuant to
 6 Section 1793.5. The reasonable costs of transporting
 7 nonconforming goods after delivery to the retailer until
 8 return of the goods to the buyer, when incurred by a
 9 retailer, shall be recoverable from the manufacturer
 10 pursuant to Section 1793.5. Written notice of
 11 nonconformity to the retailer shall constitute return of
 12 the goods for the purposes of subdivisions (a) and (b).

13 (f) The manufacturer of consumer goods with a
 14 wholesale price to the retailer of fifty dollars (\$50) or
 15 more for which the manufacturer has made express
 16 warranties shall provide written notice to the buyer of
 17 the courses of action available to him under subdivision
 18 (a), (b), or (c).

19 SEC. 8.5. Section 1793.35 of the Civil Code is amended
 20 to read:

21 1793.35. (a) Where the retail sale of clothing or
 22 consumables is accompanied by an express warranty and
 23 such items do not conform with the terms of the express
 24 warranty, the buyer thereof may return the goods within
 25 30 days of purchase or the period specified in the
 26 warranty, whichever is greater. The manufacturer may,
 27 in the express warranty, direct the purchaser to return
 28 nonconforming goods to a retail seller of like goods of the
 29 same manufacturer for replacement.

30 (b) When clothing or consumables are returned to a
 31 retail seller for the reason that they do not conform to an
 32 express warranty, the retailer shall replace the
 33 nonconforming goods where the manufacturer has
 34 directed replacement in the express warranty. In the
 35 event the manufacturer has not directed replacement in
 36 the express warranty, the retailer may replace the
 37 nonconforming goods or reimburse the buyer in an
 38 amount equal to the purchase price paid by the buyer for
 39 the goods, at the option of the retailer. Costs of
 40 reimbursement or replacement are recoverable by a

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1 retailer from the manufacturer in the manner provided
 2 in Section 1793.5.

3 (c) *Where the retail sale of draperies is not*
 4 *accompanied by an express warranty and the sale of such*
 5 *draperies is accompanied by a conspicuous writing*
 6 *disclaiming the retailer's implied warranty of*
 7 *merchantability on the fabric, the retailer's implied*
 8 *warranty of merchantability shall not apply to the fabric.*

9 SEC. 9. Section 1793.4 of the Civil Code is amended
 10 to read:

11 1793.4. Where an option is exercised in favor of
 12 service and repair under Section 1793.3, such service and
 13 repair must be commenced within a reasonable time,
 14 and, unless the buyer agrees in writing to the contrary,
 15 goods conforming to the applicable express warranties
 16 shall be tendered within 30 days. Delay caused by
 17 conditions beyond the control of the retail seller or his
 18 representative shall serve to extend this 30-day
 19 requirement. Where such a delay arises, conforming
 20 goods shall be tendered as soon as possible following
 21 termination of the condition giving rise to the delay.

22 SEC. 10. Section 1794 of the Civil Code is amended to
 23 read:

24 1794. Any buyer of consumer goods injured by a
 25 willful violation of the provisions of this chapter or
 26 willful violation of the implied or express warranty or
 27 service contract may bring an action for the recovery of
 28 three times the amount of actual damages and other legal
 29 and equitable relief, and, if the buyer ~~finally~~ prevails in
 30 any action brought under this section, he or she may be
 31 allowed by the court to recover as part of the judgment
 32 a sum equal to the aggregate amount of costs and
 33 expenses (including attorney's fees based on actual time
 34 expended) determined by the court to have been
 35 reasonably incurred by the plaintiff for or in connection
 36 with the commencement and prosecution of such action,
 37 ~~unless the court in its discretion shall determine that such~~
 38 ~~an award of attorneys' fees would be inappropriate. such~~
 39 ~~action.~~

40 SEC. 11. Section 1795.1 of the Civil Code is amended

A 4th District Court of Appeals Document

1 to read:

2 1795.1. This chapter shall apply to any equipment or
3 mechanical, electrical, or thermal component of a system
4 designed to heat, cool, or otherwise condition air, but
5 shall not apply to the system as a whole where such a
6 system becomes a fixed part of a structure.

7 SEC. 12. Section 1795.5 of the Civil Code is amended
8 to read:

9 1795.5. Notwithstanding the provisions of subdivision
10 (a) of Section 1791 defining consumer goods to mean
11 "new" goods, the obligation of a distributor or retail seller
12 of used consumer goods shall be the same as that imposed
13 on manufacturers under this chapter in a sale in which an
14 express warranty is given, except:

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

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

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

38 (d) The obligation of the distributor or retail seller who
39 makes express warranties with respect to used goods that
40 are sold in this state, shall extend to the sale of all such

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1 used goods, regardless of when such goods may have been
2 manufactured.

3 SEC. 12. Section 1795.8 is added to the Civil Code, to
4 read:

5 1795.8.

6 SEC. 13. Chapter 2 (commencing with Section 1796)
7 is added to Title 1.7 of Part 4 of Division 3 of the Civil
8 Code, to read:

9
10 CHAPTER 2. STANDARDS FOR WARRANTY WORK

11 1796. Any individual, partnership, corporation,
12 association, or other legal relationship which engages in
13 the business of installing new or used consumer goods,
14 has a duty to the buyer to install them in a good and
15 workmanlike manner.

16
17 SEC. 14. Article 4 (commencing with Section 1795.9)
18 is added to Chapter 1 of Title 1.7 of Part 4 of Division 3
19 of the Civil Code, to read:

20
21 Article 4. Service and Repair Warranties

22
23 1795.9.

24 1796.5. Any individual, partnership, corporation,
25 association, or other legal relationship which engages in
26 the business of providing service or repair to new or used
27 consumer goods has a duty to the purchaser to perform
28 those services in a good and workmanlike manner.

A 9th District Court of Appeal Division 2

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POSITIONS

DATE TYPED: 8/8/78

SUPPORT: Dept. of Consumer Affairs; L.A. County Board of Supervisors; L.A. County Dept of Consumer Affairs; CA Home Economics Assn. CA Consumer Affairs Assn.

BILL NUMBER: AB 3374

AUTHOR: Lockyer

AMENDED COPY: 8/7/78

Committee Votes:

Senate Floor Vote:

BILLING SUMMARY	
Bill No.	AB 3374
Author	Lockyer
Date	8-22-78
Committee	
Assembly	
Senate	
Assembly (V.C.)	
Senate (Chairman)	
Staff	517

Assembly Floor Vote: 74-0, P. 15363 (6/8/78)

DIGEST

This bill, relating to consumer warranties provides the following:

1. Provides that unless disclaimed, a retail seller's implied warranty is to accompany every sale of consumer goods sold at retail.
2. Provides that a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given may not limit, modify, or disclaim implied warranties.
3. Deletes the exemption from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.
4. Requires persons who install or remove or repair new or used consumer goods to perform such work in a good and workmanlike manner.
5. Provides for appropriate legal and equitable relief, and costs and attorneys' fees, as to an action by a buyer of consumer goods relative to a willful violation of specified consumer warranty provisions.

FISCAL EFFECT:

Appropriation: No. Fiscal Committee: No. Local: No.

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COMMENTS:

Existing law

Under the Song-Beverly Consumer Warranty Act, a warrantor must either supply repair and service facilities in California to handle warranty work, or he must reimburse his retailers for their expense in servicing warranties. Should the maker of an express warranty fail to do this, he may be liable for the actual expenses incurred by the consumer or retailer in obtaining those repairs promised by the warranty. If that failure be willful, triple damages and attorneys' fees may be collected.

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SENATE DEMOCRATIC CAUCUSSENATOR OMER L. RAINS, *Chairman*

Bill No. AB 3374 (As Amended: 8-7-78)

Author: Lockyer (D)

Subject: Consumer Warranties

Policy Committee: Judiciary

Ayes (5) Beverly, Sieroty, Wilson, Deukmejian, Song

Noes (1) Dennis Carpenter

Assembly Floor Vote: 74 AYES; 0 NOES.Summary of Legislation:

The existing Song-Beverly Consumer Warranty Act defines consumer goods for the purposes of the act.

This bill broadens the definition of consumer goods to include any new product or part used and bought for personal, family or household purposes except for consumables and clothing.

The Song-Beverly act applies to warranties of merchantability by manufacturers. This bill extends the implied warranty to retailers and gives the retailer a "right of indemnity" against the manufacturer.

This bill also states the duties of the retailer, who sold the product and the retailer which did not, to repair, replace, make a refund or send the customer to an independent service facility.

Existing law provides that a willful violation of its provisions results in treble damages and attorneys' fees.

This bill provides any other appropriate legal and equitable relief, costs and attorneys' fees.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill deletes that exemption.

This bill permits drapery retailers to exempt themselves from warranty of fabric by disclaiming such in a conspicuous writing which accompanies the sale of draperies.

This bill also requires a person who installs or services or repairs new or used consumer goods to perform such work in a good and workmanlike manner.

Fiscal Effect:

None

Proponents:

Department of Consumer Affairs
Los Angeles County Board of Supervisors
Los Angeles County Department of Consumer Affairs

California Home Economists Association
Consumer Affairs Association

Opponents:

Arguments in Support:

Proponents state deficiencies of both a conceptual and and technical nature exist and this bill clarifies and eliminates ambiguities, which make the Song-Beverly act an effective tool in some cases for the redress of grievances.

Arguments in Opposition:

AK:ga 8-8-78

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UNFINISHED BUSINESS

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CONCURRENCE IN SENATE AMENDMENTS

AB 3374 (Lockyer) As Amended: 7 August 1978

ASSEMBLY VOTE 74-0 (8 June 1978) SENATE VOTE 25-6 (21 August 1978)

Original Committee Reference: L., E., & C. A.DIGESTAs passed by the Assembly, this bill:

- 1) Included any new product or part used and bought primarily for personal, family, or household use (except for clothing and consumable) in the definition of "consumer goods" for purposes of the Song-Beverly Consumer Warranty Act.
- 2) Extended the implied warranty now given to manufacturers to retailers and included language to reinforce the retailer's right of recovery from the manufacturer.
- 3) Required a person who installs, services or repairs new or used consumer goods to perform such work in a good and workmanlike manner.
- 4) Required a manufacturer who fails to service or repair a product after two attempts to replace the product or give the buyer a full refund.

The Senate amendments:

- 1) Require the manufacturer, after a reasonable number of attempts, to replace the product or provide a refund.
- 2) Allow the retail seller to direct the buyer to a reasonably close independent repair or service facility if the manufacturer does not provide such services.
- 3) Remove the right of indemnity against the manufacturer in the amount of liability to the retail seller and the independent service or repair facility.

FISCAL EFFECT

None

COMMENTS

What constitutes "a reasonable number" of attempts at service or repair?

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8/22/78

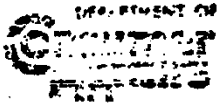
ASSEMBLY OFFICE OF RESEARCH

AB 3374

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1525 N STREET, SACRAMENTO CALIFORNIA 95811

ENROLLED BILL REPORT



AGENCY State and Consumer Services		BILL NUMBER AB 3374
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs		AUTHOR Rockyer
RECEIVED STATE AND CONSUMER SERVICES AGENCY		
SUBJECT: Consumer Warranties		AUG 30 1978
<u>HISTORY, SPONSORSHIP, AND RELATED LEGISLATION</u>		
<p>The Song-Beverly Consumer Warranty Act, enacted in 1970, was a response to the misuse of formal written warranties by manufacturers and retailers to promote retail sales. Intended to clarify the legal relations between buyer and manufacturer, the Act imposes on the manufacturer a primary responsibility commensurate with that which written warranties and advertisements lead consumers to believe the manufacturer has assumed. Most retail sales of consumer goods in California are subject to Song-Beverly and to the California Commercial Code and many also to the Federal Magnuson-Moss Consumer Warranty Act. Magnuson-Moss generally only requires certain disclosures about warranties and it does not supersede Song-Beverly when to do so would deprive consumers of rights or remedies. The Commercial Code differs from Song-Beverly in the definition of written warranty. The Commercial Code definition focuses on what is said about the product at the time of sale, while Song-Beverly looks to future performance and the responsibilities of the warrantor in case of future failure.</p> <p>AB 3374 would correct some of the deficiencies discovered by consumer agencies that have worked with the Act over the last eight years. Manufacturers and retailers also participated in the bill's drafting, and the bill as enrolled represents a compromise generally acceptable to the interested parties.</p>		
<u>ANALYSIS</u>		
<u>A. SPECIFIC FINDINGS</u>		
<p>Perhaps the major substantive change AB 3374 makes in Song-Beverly is the new broadened definition of consumer goods (Civil Code Section 1791(a) and (k)). The present Act covers new machine-like devices (with or without written warranties); new goods with written warranties, except soft goods and consumables; and used goods with written warranties, except soft goods and consumables. AB 3374 would redefine <u>consumer goods</u> as "any new product or part thereof that is used or bought for use primarily for personal, family, or household purposes except for clothing and consumables." The bill would define <u>clothing</u> as "any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories which are composed primarily of woven material, material of synthetic yarn, fiber or leather or similar fabric. Accessories composed of moving (continued next page)</p>		
RECOMMENDATION		
DEPARTMENT APPROVAL	DATE	AGENCY SIGNATURE
<i>[Signature]</i>	8/29/78	<i>[Signature]</i>
		000030 9/3/78

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parts such as, but not limited to, glasses and watches shall not be considered clothing for the purposes of the section."

The new definition of consumer goods would bring several kinds of goods under the Act's sway for the first time: cloth, furniture, tents, linens, and draperies. Drapery retailers do not want to be responsible for warranting the merchantability of drapery fabric. They proposed an amendment, which the authors accepted as New Civil Code Section 1793.35(c), that will permit a drapery retailer to disclaim liability for an implied warranty of merchantability on drapery fabric. The drapery retailers argue that the right to make such a disclaimer is necessary because fabric mills, most of which are out of state, have never guaranteed fabric before and would be likely to stop doing business in California if California law required such a warranty.

Another provision of AB 3374 would also expand the Act's coverage by deleting the existing exemption for heating and air conditioning equipment (Civil Code Section 1795.1). That exemption, added in 1971, is justified, according to the Institute of Heating and Air Conditioning Industries, by the nature of such systems, which are made up of components made by various manufacturers. The institute claims that liability for failure of a system to conform to warranted claims is impossible to assess among the various manufacturers. The Institute also asserts that there have been no problems with warranties of heating and air conditioning devices in the years the exemption has been in force. Proponents of AB 3374 point out that other goods covered by the Act are in a similar situation (appliances and automobiles often contain components of varying manufacturers) and that in any case the burden of proof shall fall on the industry to demonstrate why any new good sold in California should not be merchantable, i.e. should not carry the implied warranty of merchantability conferred by the Song-Beverly Act.

Another substantive amendment to Song-Beverly that would be made by AB 3374 would extend responsibility for the implied warranty of merchantability conferred on all new goods covered by Song-Beverly to the retailer. This amendment (to Civil Code Section 1792) is intended to remedy the present problems of consumers who cannot deal directly with the manufacturer when a covered consumer good proves unmerchantable (Section 1791.1 defines the concept of merchantability). The amendment to Section 1792 also adds an explicit statement of a retailer's right of indemnity against a manufacturer in the amount of any liability under the section.

AB 3374 would amend Civil Code Section 1793.2(d) to provide that a manufacturer or its representative has "a reasonable number" or attempts (rather than an unlimited number, as presently) in which to service or repair goods that do not conform to express warranties, after which the manufacturer must replace the goods or reimburse the consumer.

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AB 3374 would amend Civil Code Section 1793.3 to clarify the actions available to a retail seller when the manufacturer who makes an express warranty does not have repair facilities in California. This is one of several clarifying amendments to the Act.

The bill would amend Civil Code Section 1794 to provide that a prevailing consumer may be awarded costs (court costs, i.e. filing and process fees) and expenses (i.e. expert witness fees). The absence of such a provision can deter consumers from pursuing a violation of the Act through the courts, a disadvantage not equally felt by the retailer or manufacturer.

The bill would add a new chapter, "Standards for Warranty Work", requiring that installation and service or repair of consumer goods be done in a "good and workmanlike manner". These sections will provide a basis for resolving complex issues of multiple liability when a consumer good is improperly installed or repaired.

B. FISCAL IMPACT

None on this Department.

C. VOTE

Assembly: 74-0
Senate: 25-6

D. RECOMMENDATION: Sign

AB 3374 would increase the consumer protection afforded by the Song-Beverly Consumer Warranty Act by making necessary clarifications and substantive changes.

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ENROLLED BILL REPORT

Business and Transportation Agency

DEPARTMENT Motor Vehicles	AUTHOR Lockyer	BILL NUMBER AB 3374
SUBJECT Song-Beverly Consumer Warranties Act		

SUMMARY: Imposes, unless disclaimed, a retail seller's warranty of merchantability upon consumer goods sold at retail; prohibits modification, limitation, or disclaimer of implied warranties in any sale transaction in which express warranties are given;

DETAILED ANALYSIS: Existing law provides a comprehensive framework regulating the rights and liabilities of manufacturers, retailers and purchasers of consumer goods regarding express and implied warranties.

This bill, in addition to a number of amendments of no concern to this department, provides that a retail seller's implied warranty of merchantability, unless disclaimed, shall accompany every sale of consumer goods sold at retail. This would include the retail sale of motor vehicles.

This bill further provides that in the case of a defect, malfunction, or failure to conform with an express warranty the goods must be serviced or repaired without charge to the consumer by the manufacturer. If the manufacturer does not provide repair facilities within the state, the retail seller shall have the option of repairing or replacing the nonconforming goods.

COST ANALYSIS: This bill creates no added cost to this department.

LEGISLATIVE HISTORY: This bill is sponsored by Assemblyman Lockyer.

Related bills: SB 1125 (Song) regarding retail warranties on "soft goods"; SB 1361 (Zenovich) regarding automobile warranties as insurance.

RECOMMENDATION: This department recommends SIGN because the bill may provide additional protection to the consumer.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Doris V. Alexis, Director
Day Phone: 445-5281
Evening Phone: 441-4980

FOR TECHNICAL INFORMATION, PLEASE CONTACT:

John Holmes, Chief, Division of Compliance
Day Phone: 445-6340
Evening Phone: 421-1438

Leonard M. Bleier, Legislative Liaison Officer
Day Phone: 445-9492
Evening Phone: 488-3190

RECOMMENDATION

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SIGN

by <i>L. Bleier</i>	Date 8-25-78	Agency <i>Michael P...</i>	Date 8-28-78
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**CHIEF ADMINISTRATIVE OFFICER
COUNTY OF LOS ANGELES**

713 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012
974-1101

Suite 321, 11th & L Building
Sacramento, California 95814
Phone: 441-7888



HARRY L. HUFFORD
CHIEF ADMINISTRATIVE OFFICER

September 5, 1978

MEMBERS OF THE BOARD
PETER F. SCHABARUM
CHAIRMAN
KENNETH HAHN
EDMUND D. EDLLMAN
JAMES A. HAYES
BAXTER WARD

Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol
Sacramento, California 95814

Re: Assembly Bill 3374 (Lockyer), relating to Consumer
Warranties

Dear Governor Brown:

The Board of Supervisors of the County of Los Angeles supports Assembly Bill 3374 (Lockyer), relating to consumer warranties, which has been approved by the Legislature and awaits your action. This bill was introduced at the request of Los Angeles County and is included in our 1978 County-sponsored Legislative Program.

The major problem in the home furnishings field is defective merchandise. The Los Angeles County Department of Consumer Affairs has processed over 600 consumer complaints dealing with such warranties. This is a significant volume, and one that might be more easily dealt with with improved legislation.

Current law provides for implied warranties on consumer goods with the exception of consumables, "soft goods, and heating and air cooling systems." Confusion over defining what is meant by "soft goods" has mitigated the effect of the Warranty Act. We believe it was the Legislature's intent to exclude only clothing when it employed the term "soft goods." AB 3374 would specifically remove heater and air cooler exemptions and modify the "soft goods" exemption to mean only clothing.

In addition, the bill:

1. Deletes the requirement that violations of the act's warranty provisions be willful. Also deletes the provision for collecting treble damages (this makes the law consistent with the Federal Magnuson-Moss Warranty Act);
2. Requires persons who install, service, or repair new or used consumer goods to perform such work in a "good and workmanlike manner"; and

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September 5, 1978

3. Requires a retailer's implied warranty, as well as the manufacturer's, to accompany the sale of all consumer goods.

Assembly Bill 3374 is specifically responsive to the persistent difficulties we have encountered in attempting to resolve consumer/business warranty disputes.

For these reasons the Board of Supervisors of the County of Los Angeles respectfully requests that you sign Assembly Bill 3374.

Very truly yours,



Marvin Freedman
Legislative Representative

MF:eb
cc: Assemblyman Bill Lockyer

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ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 6, 1978
BILL NO. AB 3374	AUTHOR Lockyer

Vote—Senate

Ayes—25

Noes— 6 - Briggs, D. Carpenter, Cusanovich, Richardson, Russell, Stull

Vote—Assembly

Ayes—74

Noes— 0

AB 3374 - Lockyer

This bill would make the following substantive changes in the laws governing warranties applicable to the retail sale of consumer goods:

1. Expand the products covered under the warranty provisions by redefining consumer goods as "any new product or part thereof used or bought primarily for personal, family or household purposes, except clothing and consumables." (Currently, products other than motor vehicles and machine like products are only covered by the act if they are sold with express warranties, and soft goods and consumables are exempted.)
2. Extend responsibility for an implied warranty of merchantability to retail sellers and give the retailer a right of indemnity against the manufacturer.
3. Delete the existing exemption for components of heating or air conditioning systems.
4. Allow retail sellers of draperies to disclaim the retailer's implied warranty of merchantability as to the fabric if there is no express warranty and a conspicuous writing disclaiming an implied warranty.
5. Allow a consumer, who prevails in an action brought for a willful violation of warranty provisions, to recover costs and expenses (including attorney's fees based on actual time expended.).

Recommendation RLM	APPROVE	Legislative Secretary	000056
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6. Require persons who install, service or repair new or used consumer goods to perform such work in a good and workmanlike manner.

SUPPORT

Department of Consumer Affairs
Department of Motor Vehicles

OPPOSITION

No known opposition

FISCAL IMPACT

None

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DISTRICT OFFICE
1488 EAST 14TH STREET
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(415) 464-8847
JUDITH BRIGGS
ADMINISTRATIVE ASSISTANT

LEGISLATIVE ADDRESS
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(916) 448-8100

COMMITTEES:
CHAIRMAN, LABOR, EMPLOYMENT,
AND CONSUMER AFFAIRS
HUMAN RESOURCES
REVENUE AND TAXATION

pm

Assembly California Legislature

BILL LOCKYER
ASSEMBLYMAN, FOURTEENTH DISTRICT

August 31, 1978

Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol

Dear Governor Brown:

Assembly Bill 3374 is before you for signature. This bill, carried on behalf of the Los Angeles County Department of Consumer Affairs and supported by the California State Department of Consumer Affairs, increases the efficacy of the Song-Beverly Consumer Warranty Act by correcting some of the deficiencies uncovered by consumer protection agencies that have worked with the Act over the past eight years.

The measure makes several clarifying and technical clean-up amendments, in addition to four substantive changes which are as follows: Specifically, the bill broadens the scope of the Act to cover all new consumer goods sold in California, except clothing and consumables; deletes the exemption from the provisions of the Act granted to components of air heating and cooling systems; extends to the retailer the responsibility of the implied warranty of merchantability; and establishes two new sections requiring that installation and service and repair of consumer goods be done in a "good and workmanlike manner."

There is no known opposition to the bill. I respectfully request your signature.

Best wishes,

Bill Lockyer
BILL LOCKYER
Assemblyman.

BL:nj

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

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[Approved by Governor September 20, 1978. Filed with Secretary of State September 21, 1978.]

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

SECTION 1. Section 52178.5 is added to the Education Code, to read:

52178.5. An extension of a waiver granted pursuant to Section 52178 shall be provided until July 1, 1980, for a teacher teaching in those languages where there is no preparation or examination available for obtaining a certificate of competence for bilingual-crosscultural instruction, as determined by the Commission for Teacher Preparation and Licensing.

No waivers shall be granted pursuant to this section for teachers teaching in classrooms utilizing the Spanish or the Cantonese dialect of the Chinese language.

This section shall remain operative only until July 1, 1980, and as of such date is repealed, unless a later enacted statute which is chaptered before July 1, 1980, deletes or extends such date.

CHAPTER 991

An act to amend Sections 1791, 1791.1, 1791.2, 1792, 1792.1, 1792.2, 1793, 1793.2, 1793.3, 1793.35, 1793.4, 1794, 1795.1, and 1795.5 of, to add Chapter 2 (commencing with Section 1796) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, relating to consumer warranties.

[Approved by Governor September 20, 1978. Filed with Secretary of State September 21, 1978.]

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

SECTION 1. Section 1791 of the Civil Code is amended to read: 1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used or bought for use primarily for personal, family, or household purposes, except for clothing and consumables.

(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) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product which is intended for consumption by individuals, or use by individuals for purposes of

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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.

(e) "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.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

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

(h) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

(i) "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.

(j) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (h).

(k) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(l) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product.

SEC. 2. 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 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 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 has the remedies provided in Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code, and, in any action brought under such provisions, Section 1794 of this chapter shall apply.

SEC. 2.5. Section 1791.2 of the Civil Code is amended to read:

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, but if such words are used then an express warranty is created. 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.

SEC. 3. Section 1792 of the Civil Code is amended to read:

1792. Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability under this section.

SEC. 4. Section 1792.1 of the Civil Code is amended to read:

1792.1. Every 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. 5. Section 1792.2 of the Civil Code is amended to read:

1792.2. Every 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. 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, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods.

SEC. 7. Section 1793.2 of the Civil Code is amended to read:

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

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

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

(2) In the event of a failure to comply with paragraph (1) of this subdivision, 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 conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement.

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4th District Court of Appeal Division 2.

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 reasonable costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

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

SEC. 8. 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), (b), or (c), below, as follows:

(a) Return the nonconforming consumer goods to the retail seller thereof. The retail seller shall do one of the following:

- (1) Service or repair the nonconforming goods to conform to the applicable warranty.
- (2) Direct the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section.
- (3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.
- (4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(b) Return the nonconforming consumer goods to any retail seller of like goods of the same manufacturer within this state who may do

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one of the following:

- (1) Service or repair the nonconforming goods to conform to the applicable warranty.
- (2) Direct the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section.
- (3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.
- (4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(c) Secure the services of an independent repair or service facility for the service or repair of the nonconforming consumer goods, when service or repair of the goods can be economically accomplished. In that event the manufacturer shall be liable to the buyer, or to the independent repair or service facility upon an assignment of the buyer's rights, for the actual and reasonable cost of service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent service dealer for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.

The course of action prescribed in this subdivision shall be available to the buyer only after the buyer has followed the course of action prescribed in either subdivision (a) or (b) and such course of action has not furnished the buyer with appropriate relief. In no event, shall the provisions of this subdivision be available to the buyer with regard to consumer goods with a wholesale price to the retailer of less than fifty dollars (\$50). In no event shall the buyer be responsible or liable for service or repair costs charged by the independent repair or service facility which accepts service or repair of nonconforming consumer goods under this section. Such independent repair or service facility shall only be authorized to hold the manufacturer liable for such costs.

(d) A retail seller to which any nonconforming consumer good is returned pursuant to subdivision (a) or (b) shall have the option of providing service or repair itself or directing the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section. In the event the retail seller directs the buyer to an independent repair or service facility, the manufacturer shall be liable for the reasonable cost of repair services in the manner provided in subdivision (c).

(e) 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

4th District Court of Appeal Division 2.

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. The reasonable costs of transporting the goods shall be at the retailer's expense. The retailer shall be entitled to recover all such reasonable costs of transportation from the manufacturer pursuant to Section 1793.5. The reasonable 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).

(f) The manufacturer of consumer goods with a wholesale price to the retailer of fifty dollars (\$50) or more for which the manufacturer has made express warranties shall provide written notice to the buyer of the courses of action available to him under subdivision (a), (b), or (c).

SEC. 8.5. Section 1793.35 of the Civil Code is amended to read: 1793.35. (a) Where the retail sale of clothing 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 clothing 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.

(c) Where the retail sale of draperies is not accompanied by an express warranty and the sale of such draperies is accompanied by a conspicuous writing disclaiming the retailer's implied warranty of merchantability on the fabric, the retailer's implied warranty of merchantability shall not apply to the fabric.

SEC. 9. 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. 10. 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 or a willful violation of the implied or express warranty or service contract may bring an action for the recovery of three times the amount of actual damages and other legal and equitable relief, and, if the buyer prevails in any action brought under this section, he or she may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

SEC. 11. Section 1795.1 of the Civil Code is amended to read:

1795.1. This chapter shall apply to any equipment or mechanical, electrical, or thermal component of a system designed to heat, cool, or otherwise condition air, but shall not apply to the system as a whole where such a system becomes a fixed part of a structure.

SEC. 12. 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, the obligation of a distributor or retail seller of used consumer goods shall be the same as that imposed on manufacturers under this chapter in a sale in which an express warranty is given, 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 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. 13. Chapter 2 (commencing with Section 1796) is added to

4th District Court of Appeal Division 2.

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Ch. 987 (SB 1590) Garamendi. Addition to Marshall Gold Discovery State Historic Park.

Existing law does not provide for the acquisition of lands adjacent to the Marshall Gold Discovery State Historic Park as an addition to the state historic park.

Chapter 1521 of the Statutes of 1974 reappropriated \$1,000,000 from the Bagley Conservation Fund to the Department of Parks and Recreation for augmentation for land value increases for Bagley Conservation Fund land acquisition projects.

This bill would, of the unencumbered balance of such moneys, reappropriate \$175,000, or so much thereof as may be necessary, to the department for expenditure, without regard to fiscal years, for the acquisition of described lands adjacent to such park.

The bill would prohibit the encumbrance of such appropriated funds until the State Public Works Board has made a certain determination regarding implied dedication and public prescriptive rights or claims.

The bill would take effect immediately as an urgency statute.

Ch. 988 (AB 3231) Nestande. Unincorporated towns and villages: museums.

Existing law authorizes any unincorporated town or village to establish, equip, and maintain a public library, and also provides for the election of a board of library trustees, to be vested with specified powers.

This bill would authorize a library board of trustees to establish, maintain, and equip a public museum in the library district, to be funded primarily by private funds, and to constitute the library board of trustees as a museum board of trustees to exercise specified powers.

Ch. 989 (SB 1935) Marks. Housing: redevelopment.

(1) Under existing law, a redevelopment agency is required to file a report of its activities with its legislative body and the Department of Housing and Community Development on or before October 1 of each year.

This bill would instead require such report to be filed with these entities within 6 months of the end of the agency's fiscal year. It would also prescribe an extension to such entities for certain reporting requirements with respect to the 1977-78 fiscal year.

(2) Currently, local agencies may operate rehabilitation programs. Citizen participation in the form of consultation with an elected or appointed citizen advisory board which is composed of representatives of both owners and residents of property is, in part, required in such programs in the selection of residential rehabilitation areas.

This bill would specify duties of the board and require that the board include, to the greatest extent feasible, representatives of resident owners, nonresident owners, and resident tenants of both single-family and multiple-family residential structures who are not apartment managers, resident agents, or employees of property owners.

(3) This bill would take effect immediately as an urgency statute.

Ch. 990 (AB 3474) Chacon. Schools: bilingual education.

Currently, there is a Bilingual Education Act of 1972 which authorizes school districts to participate in a prescribed program of bilingual education. Also, there is the Chacon-Moscone Bilingual-Bicultural Education Act of 1976 which generally requires each limited-English-speaking pupil enrolled in the California public school system in kindergarten through grade 12 to receive instruction in a language understandable to the pupil as well as in English. The 1976 act also generally requires all teachers in bilingual programs to be bilingual-crosscultural teachers but authorizes school districts with a shortage of qualified bilingual-crosscultural teachers to grant waivers which are renewable 1-year waivers, and which expire no later than September 1, 1979.

This bill would provide for the extension of any such waiver until July 1, 1980, for a teacher teaching in those languages where there is no preparation or examination available for obtaining a certificate of competence for bilingual-crosscultural instruction, except that it would prohibit the granting of any such waiver for teachers teaching in classrooms utilizing the Spanish or the Cantonese dialect of the Chinese language.

Ch. 991 (AB 3374) Lockyer. Consumer warranties.

Existing law provides that unless disclaimed, a manufacturers' implied warranty of merchantability shall accompany every sale of consumer goods sold at retail.

This bill, in addition, would provide that unless disclaimed, a retail seller's implied warranty shall accompany every sale of consumer goods sold at retail.

Existing law provides that a manufacturer, distributor or retailer making express

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warranties as to consumer goods may not limit, modify, or disclaim implied warranties.

This bill would provide that a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given may not limit, modify or disclaim implied warranties.

Existing law provides for an action by a buyer of consumer goods as to a willful violation of specified consumer warranty provisions and provides for treble damages and attorneys' fees as to such an action.

This bill would, in addition, provide for any other appropriate legal and equitable relief, and costs and attorneys' fees, as to such an action.

Existing law exempts from specified consumer warranty provisions any equipment or part thereof which is a component of a heating or air conditioning system.

This bill would delete such exemption.

The bill also would require persons who install or service or repair new or used consumer goods to perform such work in a good and workmanlike manner.

It would recast provisions relating to cost of repair of nonconforming goods and also make other related changes.

Ch. 992 (AB 3516) Brown. Schools: classified employees: holidays.

Existing law requires that school district governing boards not designating September 9, "Admission Day," as a paid holiday for classified employees shall provide a substitute holiday.

This bill would add technical clarifying provisions.

Ch. 993 (SB 1309) Beverly. Judgments: execution: exemptions.

Existing law provides that heads of families and persons aged 65 or over may claim a homestead exemption, or a claim for exemption from execution for a dwelling house, house trailer, mobilehome, houseboat, boat, or other waterborne vessel in which such person or the family of such person actually resides, up to \$30,000, and provides for a claim of homestead or claim for exemption from execution for such property as to all other persons of up to \$15,000.

This bill would increase the limits of \$30,000 and \$15,000 to \$40,000 and \$25,000, respectively.

Ch. 994 (SB 2229) Campbell. Appropriation: Department of Justice.

This bill would appropriate \$150,000 from the Motor Vehicle Account in the State Transportation Fund to the Department of Justice to pay the claim of Bonnie Jean Marsh against the State of California.

This bill would take effect immediately as an urgency statute.

Ch. 995 (AB 3689) Levine. State Bar.

Existing law provides for the membership of the board of governors of the State Board [Bar]* and requires the election of 15 attorney members from specified districts and the appointment [of]* 6 lay members; such members to serve for a term of 3 years.

This bill would require the election of 1 additional attorney member by the board of directors of the California Young Lawyers Association, from the membership of that association. Such member would serve for a term of 1 year and would be eligible for reelection. Vacancies would be filled in a specified manner.

Ch. 996 (AB 3168) Rosenthal. Psychiatric technicians.

Under existing law, fees paid under the Psychiatric Technician Law are generally paid on an annual basis.

This bill permits the establishment of a biennial renewal period by the Board of Vocational Nurse and Psychiatric Examiners.

Existing law prescribes the maximum fees to be paid for licenses by psychiatric technicians.

This bill would increase the renewal fee and delinquency fee for such licenses.

Existing law provides that all money in the Vocational Nurse and Psychiatric Technician Examiners Fund is continuously appropriated to carry out specified provisions of law.

The fees provided in this bill would result in an increase in such fund available for expenditure.

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VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1981-82 REGULAR SESSION
1981-82 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 1, 1980
Recessed December 2, 1980 Reconvened January 5, 1981
Recessed April 9, 1981 Reconvened April 20, 1981
Recessed July 7, 1981 Reconvened July 10, 1981
Recessed July 10, 1981 Reconvened August 10, 1981
Recessed September 15, 1981 Reconvened January 4, 1982
Recessed April 1, 1982 Reconvened April 12, 1982
Recessed June 30, 1982 Reconvened August 2, 1982
Adjourned September 1, 1982
Adjourned Sine Die November 30, 1982
Legislative Days..... 248

HON. WILLIE L. BROWN, JR.
Speaker

HON. LEO T. McCARTHY
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. ROBERT W. NAYLOR
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

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A.B. No. 3559—Thurman.

An act to add Section 5408.5 to the Business and Professions Code, relating to outdoor advertising.

1982

- Mar. 15—Read first time. To print.
 Mar. 16—From printer. May be heard in committee April 15.
 Mar. 25—Referred to Com. on B. & P.
 April 27—From committee chairman, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
 April 28—Re-referred to Com. on B. & P.
 May 20—Joint Rule 61 suspended. From committee; Do pass. To Consent Calendar. (May 4.)
 May 24—Read second time. To Consent Calendar.
 May 28—Read third time, passed, and to Senate. (Ayes 69. Noes 0. Page 13858.)
 June 1—In Senate. Read first time. To Com. on RLS. for assignment.
 June 2—Referred to Com. on TRANS.
 June 9—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on TRANS.
 Aug. 5—From committee: Do pass. (Ayes 6. Noes 0.)
 Aug. 9—Read second time. To third reading.
 Aug. 17—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 13306.)
 Aug. 18—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
 Aug. 23—Senate amendments concurred in. To enrollment. (Ayes 78. Noes 0. Page 17507.)
 Aug. 26—Enrolled and to the Governor at 5 p.m.
 Sept. 7—Approved by the Governor.
 Sept. 8—Chaptered by Secretary of State—Chapter 771, Statutes of 1982.

A.B. No. 3560—Tanner.

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

1982

- Mar. 15—Read first time. To print.
 Mar. 16—From printer. May be heard in committee April 15.
 Mar. 30—Referred to Com. on C.P. & T.M.
 April 28—From committee: Do pass. To Consent Calendar. (April 27.)
 April 29—Read second time. To Consent Calendar.
 May 6—Read third time, passed, and to Senate. (Ayes 66. Noes 0. Page 12892.)
 May 6—In Senate. Read first time. To Com. on RLS. for assignment.
 May 13—Referred to Com. on JUD.
 June 16—From committee: Do pass. To Consent Calendar.
 June 17—Read second time. To Consent Calendar.
 June 21—Read third time, passed, and to Assembly. (Ayes 32. Noes 0. Page 11182.)
 June 21—In Assembly. To enrollment.
 June 22—Enrolled and to the Governor at 4 p.m.
 July 4—Approved by Governor.
 July 4—Chaptered by Secretary of State—Chapter 385, Statutes of 1982.

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MJN/371

ASSEMBLY BILL

No. 3560

Introduced by Assemblywoman Tanner

March 15, 1982

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 3560, as introduced, Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

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

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

- 1 SECTION 1. Section 1794 of the Civil Code is
2 repealed.
3 1794. Any buyer of consumer goods injured by a
4 willful violation of the provisions of this chapter or a
5 willful violation of the implied or express warranty or
6 service contract may bring an action for the recovery of
7 three times the amount of actual damages and other legal
8 and equitable relief, and, if the buyer prevails in any

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MJN/372

1 action brought under this section, he or she may be
2 allowed by the court to recover as part of the judgment
3 a sum equal to the aggregate amount of costs and
4 expenses (including attorney's fees based on actual time
5 expended) determined by the court to have been
6 reasonably incurred by the plaintiff for or in connection
7 with the commencement and prosecution of such action.

8 SEC. 2. Section 1794 is added to the Civil Code, to
9 read:

10 1794. (a) Any buyer of consumer goods who is
11 damaged by a failure to comply with any obligation
12 under this chapter or under an implied or express
13 warranty or service contract may bring an action for the
14 recovery of damages and other legal and equitable relief.

15 (b) The measure of the buyer's damages in an action
16 under this section shall be as follows:

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

21 (2) Where the buyer has accepted the goods, Sections
22 2714 and 2715 of the Commercial Code shall apply, and
23 the measure of damages shall include the cost of repairs
24 necessary to make the goods conform.

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

33 (d) If the buyer prevails in an action under this
34 section, the buyer may be allowed by the court to recover
35 as part of the judgment a sum equal to the aggregate
36 amount of costs and expenses, including attorney's fees
37 based on actual time expended, determined by the court
38 to have been reasonably incurred by the buyer in
39 connection with the commencement and prosecution of
40 such action, unless the court in its discretion determines

1 that such an award of attorney's fees would be
2 inappropriate.

3 SEC. 3. Section 1794.2 of the Civil Code is repealed.

4 ~~1794.2.~~ The provision of Section 1794 authorizing the
5 recovery of three times the amount of the buyer's actual
6 damages shall not apply to either of the following:

7 (a) A cause of action commenced or maintained
8 pursuant to Section 382 of the Code of Civil Procedure or
9 pursuant to Section 1781 of this code.

10 (b) A judgment based solely on a breach of the
11 implied warranty of merchantability, or, where present,
12 the implied warranty of fitness.

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Memorandum

To : Steve Fishbein
Legislative Coordinator

Date : April 6, 1980

File No.: L-78-90

Telephone: ATSS () 5-5126
()

From : Dick Elbrecht, Supervising Attorney
DIVISION OF CONSUMER SERVICES
Legal Services Unit

Subject: AB 3324 (Fenton)

I am enclosing a consolidated set of proposed amendments to this bill.

Amendments 1 and 2 are explained in my memo of March 20, 1980. Amendments 3 and 4 are those which I have drafted at the request of Mr. Ray LeBov at the suggestion of a constituent, Dennis Cavanaugh, a San Francisco attorney who represents mobilehome buyers.

Amendments 3 and 4 represent a carefully-drafted set of amendments which respond to Mr. Cavanaugh's problem and which, in my view, are needed and deserve our Department's support. As presently drafted, the remedies language of the Song-Beverly Act authorizes an award of attorney's fees to a buyer who prevails only if the court also determines that the seller's violation or breach was "wilful." In a recent suit, Mr. Cavanaugh's client prevailed, but the judge was unable to award fees because the seller's failure to perform was not "wilful."

Amendments 3 and 4 re-write two sections of the Song-Beverly Act that define a buyer's private remedies -- Civil Code Sections 1794 and 1794.2 -- and consolidate the existing principles of both sections into a new Section 1794 with three subsections.

Subsection (a) makes it clear that the buyer has a right to recover his or her actual damages, and litigation expenses including attorney's fees based on actual time expended, upon proof of a non-wilful violation of breach. Although not a right explicitly granted by the text of present Civil Code Section 1794, the right to recover actual damages for non-wilful violations of statutes on breaches of warranties is conferred by Division Two of the California Commercial Code and under principles of "negligence per se." Subsection (a) is therefore a substantial re-statement of present law, though it does codify the present law and makes it more accessible to everyone, especially non-lawyers.

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Subsection (b) carries forward the rule already set forth in present Section 1794 that upon proof of a "wilful" violation or breach, a judgment for treble damages may be awarded. Since subsection (a) already provides for an award of single damages, the maximum civil penalty authorized by subsection (b) is "twice the amount at which the actual damages are assessed." The provision to subsection (b) is derived from the language of present Section 1794.2 and it carries forward the rule in that section without change. Subsection (b) therefore does not represent any change in the present law.

Subsection (c) deals with litigation expenses including attorney's fees. It carries forward the essential language of present Section 1794, and it also makes it clear that an award of litigation expenses and attorney's fees is authorized in any action in which the buyer prevails -- whether an action for actual damages under subsection (a), or an action for actual damages under subsection (a) plus a civil penalty under subsection (b) for a "wilful" violation or breach. Insofar as subsection (c) confers a claim for litigation expenses and attorney's fees in the case of non-wilful violations or breaches, it is a change in the present law (which only authorizes such awards when the violation or breach was "wilful").

I would like to point out that Section 1794 was one of the sections that was affected by 1978 AB 3374 (Lockyer). As originally proposed in that bill, a full range of remedies including treble damages was authorized for any violation or breach, wilful or not. Before final adoption, the bill was amended by inserting the word "wilful." While I was not directly involved, I am reasonably certain that the purpose of that change was to prevent the recovery of penalties in cases of non-wilful violations and breaches. You will observe that subsection (b) carries forward that principle by limiting the recovery of a civil penalty to those situations in which the buyer establishes that the violation or breach was "wilful."

As you will observe, I have attempted to avoid any substantive law changes except those which are needed to respond to Mr. Cavanaugh's problem, and I suspect that the proposed amendments will meet with little or no opposition.

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AMENDMENTS TO AB 3324 (Fenton)

1. On page 2, delete all of lines 1 and 2, and substitute the words "simple and readily understood language, which shall clearly identify the party making such express warranties, and which shall conform".
2. On page 2, line 7, after the words "Federal Trade Commission" insert "issued pursuant thereto".
3. Delete all of present Civil Code Section 1794, and substitute the following:

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

"(b) If the buyer establishes that such failure to comply was wilful, the judgment may include a civil penalty which shall not exceed twice the amount at which the actual damages are assessed; provided, that only actual damages shall be recoverable in a class action under Section 382 of the Code of Civil Procedure or Section 1781 of this code, or with respect to a claim based solely on a breach of an implied warranty.

"(c) If the buyer prevails in an action under this section, the buyer shall recover costs and reasonable litigation expenses, including attorney's fees based on actual time expended."
4. Delete all of present Civil Code Section 1794.2.

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ANALYST: Dick Eldrecht/Steve Fisher
Bu Ph: 445-5126 322-4792

STATE OF CALIFORNIA-

EDMUND G. BROWN JR., Governor



1020 N STREET, SACRAMENTO, CALIFORNIA 95814

AB 3324 

REQUEST FOR APPROVAL OF PROPOSED LEGISLATION

STATE AND CONSUMER SERVICES AGENCY

DEPARTMENT:	Consumer Affairs	BILL CONTROL NO.:	SES-80-33
TITLE:	Disclosure of Warranty Terms		
PROBLEM:	<p>The California Song Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.) and the federal Magnuson-Moss Consumer Warranty Act (15 U.S.C. Sections 2301 & 2312 and 16 C.F.R. Part 701) both mandate the disclosure of the terms and conditions of consumer product warranties. However, the federal act has preempted the general disclosure provisions of the California act, with the result that violations of the general disclosure provisions of the California act do not trigger the penalty provisions of the California act (at Civil Code Section 1794). Further consequences include the fact that motor vehicle dealers</p> <p style="text-align: right;">(cont.)</p>		
PROPOSED SOLUTION (and alternatives):	<p>Amend the general disclosure provision of the California Song-Beverly Consumer Warranty Act (at Civil Code Section 1793.1(a)) to require the warrantor to comply with the disclosure provisions of the federal Magnuson-Moss Act and Federal Trade Commission regulations thereunder. The amendment could either simply cross-reference to and incorporate by reference the federal act and regulations on disclosure. This amendment also will alert California businesses to the existence of the federal act and regulations and will thereby facilitate compliance with those regulations.</p>		
FISCAL IMPACT:			
LEGISLATIVE HISTORY:			
SUGGESTED AUTHOR:	Assemblyman Lockyer	GOVERNOR'S OFFICE USE	
DEPARTMENT HEAD:	DATE:	AGENCY HEAD:	DATE:
<i>[Signature]</i>	<i>10/29/79</i>	<i>one signed by</i> <i>the Dept.</i>	<i>mw</i> <i>2/4</i>
			APPROVED AUTHOR:

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PROBLEM (continued)

who wilfully fail to comply with the disclosure provisions of either the federal or California Acts are not subject to licensing action under Vehicle Code Section 11713(o). A technical amendment is needed to tie up these loose ends. Failure to do so will deprive consumers of remedies in appropriate cases.

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1020 N STREET, SACRAMENTO, CALIFORNIA 95814



April 23, 1982

Honorable Sally Tanner
Chairwoman
Assembly Consumer Protection and
Toxic Materials Committee
State Capitol, Room 4146
Sacramento, CA 95814

Re: AB 3560

Dear Assemblywoman Tanner:

The Department of Consumer Affairs is sponsoring AB 3560, legislation which would amend the Song-Beverly Consumer Warranty Act to provide purchasers of consumer goods with coherent, understandable remedies for violations of California's warranty laws. AB 3560 is scheduled to be heard in your committee on April 27th at 1:30 p.m.

This bill is essentially a consumer law "housekeeping" bill which does not add to existing law any substantive legal obligation that is not already present in consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single location in the Song-Beverly Act the remedies now available under the Act and the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, and the general contract law of California. The range of available legal remedies is broad, yet because they are spread among many different statutes, they are not reasonably accessible.

Specifically, AB 3560 would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.

We believe the effect of this bill will be to foster the voluntary resolution of disputes by better deferring the consequences to both parties if a resolution is not achieved. It is where the law and its consequences are uncertain that real problems are not resolved or that expensive litigation ensues.

The bill would include within the remedy language an explicit right to recover actual damages for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. These remedies are already conferred by federal law. Conferring Song-Beverly jurisdiction to resolve disputes without a finding of willfulness will benefit warrantors as well as consumers. Currently, in order to proceed, consumers and their attorneys must search for proof of "willfulness," focusing less on a constructive approach to dispute resolution than on the motivations of the parties.

This bill has been carefully developed and will improve our law by promoting voluntary compliance and voluntary settlement of disputes.

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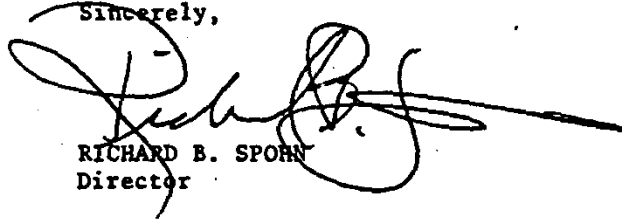
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Honorable Sally Tanner
Page two

Included with this letter is a more comprehensive analysis of AB 3560.
Should you wish further information, please contact our Legislative Unit at
322-4292.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members, Assembly Consumer Protection and
Toxic Materials Committee

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1020 N STREET, SACRAMENTO, CALIFORNIA 95814

(916) 445-5126



EXPLANATION AND ANALYSIS OF

AB 3560 (Tanner)

A Consumer Law "Housekeeping" Bill

On Buyer Remedies for Breach of Warranty

March 1982

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AB 3560 (Tanner) is sponsored by the Department of Consumer Affairs.

This bill is essentially a consumer law "housekeeping" bill whose function is to make our consumer warranty law more coherent, rational, understandable and effective.

The bill does not add to the law any substantive legal obligation that is not already present in one or more of our consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single section of the Song-Beverly Consumer Warranty Act the remedies now available to buyers under the Song-Beverly Act and other California and federal laws.

This bill strives to make the song-Beverly Act more coherent, rational and intelligible. Both those who extend consumer product warranties, and those who receive them, have a vital interest in the coherence, rationality and intelligibility of the law.

Explanation of Warranty Remedies Provision

Civil Code §§ 1794 and 1794.2, part of the Song-Beverly Act, express the basic rules on buyer remedies:

1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter or a willful violation of the implied or express warranty or service contract may bring an action for the recovery of three times the amount of actual damages and other legal and equitable relief, and, if the buyer prevails in any action brought under this section, he or she may be allowed by the court to recover as part of the judgment a sum equal

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of the Code of Civil Procedure or Section 1781 of this code, or with respect to a claim based solely on a breach of an implied warranty.

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

The purpose and effect of revised § 1794 is to provide a clear statement, in a single section of the Song-Beverly Act, of the buyer's basic remedies for breach of warranty and violation of the Act.

As the accompanying chart illustrates, the bill does not confer any remedy that buyers do not already enjoy -- whether under the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, the general contract law of California, or the Song-Beverly Act.

The bill does restate and consolidate these remedies at a single location within the Song-Beverly Act, thus making them more accessible to all of the participants in retail sale transactions, including manufacturers, distributors, retailers, consumers, attorneys, others who advise consumers, and judges, including particularly Small Claims Court judges and court personnel.

The bill is not intended to foster more litigation over consumer warranties, and the Department of Consumer Affairs does not believe it will have that effect. Indeed, there is now no great

to the aggregate amount of costs and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

1794.2. The provision of Section 1794 authorizing the recovery of three times the amount of the buyer's actual damages shall not apply to either of the following:

(a) 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) A judgment based solely on a breach of the implied warranty of merchantability, or, where present, the implied warranty of fitness.

AB 3650 would consolidate §§ 1794 and 1794.2 and would enact a new § 1794 which would provide as follows:

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

(b) The measure of the buyer's damages in an action under this section shall be as follows:

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

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

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382

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abundance of litigation under the Song-Beverly Act, either at the trial or appellate level. To the best of our knowledge, there is not a single reported appellate decision under the Song-Beverly Act, despite the fact that it has been on the books for about ten years.

We believe that the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. We believe that a greater degree of certainty in remedies that are available to the buyer will help resolve problems in a fair and equitable way, and will also reduce the chance of litigation. It is where the law and its consequences are uncertain that real problems are either not resolved, or that expensive litigation ensues.

At the hearings before the Assembly Committee on Labor, Employment and Consumer Affairs at San Diego in December, 1979, in which the Committee invited comment on new and used car automobile sale problems, a variety of witnesses testified to the inadequacy of our present laws. There was widespread agreement among those testifying that our present consumer warranty laws do not provide remedies that are adequate.

As the accompanying chart shows, however, the range of available legal remedies is quite broad. Yet, because they are spread among many different statutes, they are not reasonably accessible to buyers and their attorneys. A good example is the provision that motivated this amendment. While the Magnuson-Moss Act grants courts the power to assess actual damages and reasonable attorney's

fees upon a finding of a breach of warranty that is not willful, the Song-Beverly Act requires a finding of "willfulness" before an award of attorney's fees can be made. The amendment to the remedy section originated in a complaint from a buyer who had prevailed in a suit but was not awarded a reasonable attorney's fee because the judge felt that the court did not have the power to make such an award unless the court could properly find that the breach of warranty was "willful".

Under present law, therefore, buyers would be well advised to proceed under both the federal Magnuson-Moss Consumer Warranty Act as well as the California Song-Beverly Warranty Act, taking their chances with each. But these elements of chance and "game" are unacceptable as a matter of public policy, we believe. Whether a particular buyer is treated justly depends less on the actual merits of his or her case than on the sophistication of his or her lawyer. Since our consumer warranty laws must be relatively self-executing in order to be successful, we find it difficult to accept uncertainties of this kind.

Warrantors too have a vital interest in achieving a reasonable degree of certainty in remedies. Now, the provision on damages in the Song-Beverly Act is open-ended. There are no limits on the kind or extent of damages that may be awarded, except those which an individual judge may impose. That too is a degree of uncertainty that we find difficult to accept. The uncertainty can cut both ways for all parties to a consumer warranty transaction, since the uncertainty will make it difficult to assess the risks

California statutes address the same issue in the same way, identical statutory language should be employed.

As we have explained above, the bill would include within the remedies language of the Song-Beverly Act an explicit right to recover actual damages (not treble damages) for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. As we explained, these remedies are already conferred by the federal Magnuson-Moss Act, but we believe that we should not force consumers to utilize a federal law to enforce their rights in "garden variety" warranty disputes. There is also an industry interest in this particular change, which we would like to explain. Conferring Song-Beverly jurisdiction to resolve disputes in favor of the consumer without a finding of willfulness will also benefit warrantors. Now, in order to proceed under the Song-Beverly Act, consumers and their attorneys must search for proof of "willfulness". Just as a requirement of a finding of fault in divorce cases added to the bitterness and complexity of divorces as well as the length of trials and other personal and social costs, we feel that denying relief without a finding of willfulness tends to force consumers and their attorneys to pursue a less constructive approach to dispute resolution, focusing less on the merits of the problem than on the motivations of the parties. The focus instead ought to be on peaceable dispute resolution, including especially the actual merits of the claim, including the questions of whether there was a defect and whether the defect was covered by the warranty. (Of course, where there is a "willful" breach of

of trial and will result in settlements that will depend on factors other than the real merits of the case.

As a result of the amendment proposed by the Association of California Insurance Companies, which we have accepted, the contract measure of damages, as set forth in §§ 2711-2715 of the California Commercial Code, would apply in all actions under the Song-Beverly Act. And to resolve a major unresolved question under the California Commercial Code, the bill explicitly states that the buyer's damages may include the necessary costs of repairs.

By cross-referencing to and incorporating the Commercial Code provisions on buyer remedies, the bill also brings into play the thousands of court decisions under the Commercial Code, and its predecessors, that have articulated principles of construction and application to the wide range of circumstances and situations that have been presented to the courts in the past. This too will enhance the degree of certainty of result to the benefit of everyone.

From an industry standpoint, the bill is also deserving of support, because of its inclusion of the federal Magnuson-Moss Act's language giving the courts explicit discretion not to award reasonable attorney's fees. While the present text of § 1794 also confers that power, the Magnuson-Moss Act's language is more explicit. Tracking the Magnuson-Moss Act's language will also help eliminate confusion on other points. Unless there is a good policy reason to the contrary, we feel that when both federal and

warranty, the courts should have the same power that they presently have to award penalty damages.)

This bill has been carefully developed. It will improve our law. It will make it more coherent, rational and understandable. It will promote voluntary compliance and will help promote the voluntary settlement of disputes.

We urge your support.

Thank you.

RAE:vc
(3/30/82)
Attachment

- (1) Buyer's Remedies Under California and Federal Consumer Warranty Law

ASSEMBLY COMMITTEE ON CONSUMER
PROTECTION AND TOXIC MATERIALS

AB 3560

ASSEMBLYWOMAN SALLY TANNER, CHAIRWOMAN

HEARING DATE:

April 27, 1982

AB 3560 (Tanner), as introduced March 15, 1982

SUBJECT:

Consumer warranties: consolidation of buyer's remedies.

DIGEST:

Existing state and federal laws provide buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. These laws permit a buyer to recover actual damages, equitable relief, legal costs (including attorney's fees) and in some cases, treble damages.

This bill would consolidate all of these existing buyer's remedies and incorporate them into a single, rewritten provision of California's Song-Beverly Consumer Warranty Act.

FISCAL EFFECT:

This is not a fiscal bill.

STAFF COMMENTS:

1. A buyer's remedies for willful (intentional) and non-willful (negligent) breaches of warranty or violations of warranty law are found in California's Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.
2. This bill is sponsored by the Department of Consumer Affairs. The sponsor states that because the buyer's rights are located in different statutes, buyers and sellers are both often unaware they even exist. Legal enforcement can also be difficult and confusing.

The sponsor states that consolidating all of these remedies in a single state law will make them more accessible to all of the parties to a consumer transaction and thereby foster less misunderstanding and more voluntary resolution of disputes.

3. This bill would not create any new buyer remedies which do not already exist. The bill does, however, clarify one aspect of California's Commercial Code by specifically including the cost of repairs which are necessary to make goods conform to the warranty where the buyer has accepted non-conforming goods.

PREPARED BY:

AB 3560

Jay DeFuria
April 26, 1982

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Memorandum

To : TOM GREENE, Legislative Coordinator
Department of Consumer Affairs

Date : April 30, 1982

File No.: L-80-214


From : DIVISION OF CONSUMER SERVICES -- Legal Services Unit

Subject: AB 3560 and AB 3561 (TANNER).

I have prepared and am enclosing the text of a statement which is designed to be given by our author, Assemblywoman Tanner, in presenting AB 3560 and AB 3561, which you may want to transmit to her personally or by letter.

I am also enclosing an amended version of the explanation and analysis of each of these bills. I have amended the explanation and analysis of AB 3560 to reflect the recommendation made by Jay DeFuria; and I have amended the explanation and analysis of AB 3561 to change the reference in the attached table from the earlier Fenton bill to AB 3560. I would like to suggest that the enclosed explanations and analyses be used when duplicating additional copies for delivery to legislators and others.

Thank you for your attention.


RICHARD A. ELBRECHT
Supervising Attorney

RAE:vc
Enclosures

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(916) 445-4465
1600 N STREET, SACRAMENTO, CALIFORNIA 95814



STATEMENT PRESENTING AB 3560 AND AB 3561 (TANNER)

April 30, 1982

Mr. Chairman and members of the Committee:

AB 3560 and AB 3561 are both essentially consumer law "housekeeping" bills. Their purpose is to make our consumer warranty laws more coherent, rational, understandable and effective.

These bills do not add to our law any substantive legal obligation that is not already present in one or more of our consumer warranty statutes, either federal or California.

AB 3560 (TANNER)

The purpose and function of AB 3560 (Tanner) is to consolidate and restate in a single section of the Song-Beverly Consumer Warranty Act the remedies now available to buyers under the Song-Beverly Act and other California and federal laws.

The bill strives to make the Song-Beverly Act more coherent, rational and intelligible. Both those who extend consumer product warranties, and those who receive them, have a vital

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interest in the coherence, rationality and intelligibility of the law.

AB 3560 makes it clear that a consumer who is a victim of a breach of any written or implied warranty, or a violation of the Song-Beverly Act, has a right to recover actual damages and reasonable attorney's fees.

By virtue of a quirk in drafting, the present language of the Song-Beverly Act authorizes a court to award reasonable attorney's fees only if the buyer approves that the violation was "wilful". The bill would give the buyer substantially the same remedies, including attorney's fees, that buyers already have under the federal Magnuson-Moss Consumer Warranty Act, without deleting any of the remedies presently conferred by the Song-Beverly Act. Inconsistencies between the federal and California warranty remedies would be substantially eliminated.

The present version of the Song-Beverly Act gives a court the power to award a monetary penalty if the violation is "wilful". This bill leaves that power intact.

This bill also incorporates the Commercial Code measure of damages for breach of warranty, and it eliminates an ambiguity in the Commercial Code provisions, by making it clear that such damages can include the cost of repairs necessary to make the product conform.

AB 3560 will clarify and simplify the provisions on buyer's remedies so that manufacturers, retailers, buyers, their attorneys and other advisers, and judges, including small claims court personnel, will find it easier to observe, enforce and apply this law.

AB 3561 (TANNER)

AB 3561 is also a consumer law "housekeeping" bill. Again, it does not add to the law any substantive legal obligations that are not already present in one or more of our consumer warranty statutes, federal or California.

The purpose and function of AB 3561 is to reconcile federal and California warranty disclosure requirements. It makes it clear that any written warranties must comply with the federal warranty standards, and it provides that violations of the federal standards will also constitute violations of the Song-Beverly Act.

Now, if a used car dealer gives a written warranty that does not comply with either the California or the federal standards, the DMV cannot suspend the dealer's license. This is contrary to the law that existed prior to the adoption of the federal standards, which permitted the DMV to suspend a dealer's license if the dealer did not comply with the disclosure requirements of the Song-Beverly Act. There is reason to believe that the

effect of the adoption of the federal disclosure requirements was to preempt the California disclosure requirements, thus extinguishing the power of the DMV to suspend for violations. Making compliance with the federal standards an express violation of the Song-Beverly Act would give the DMV jurisdiction to take licensing action if needed.

The amendments proposed by AB 3561 would also alert business firms in California to the need to comply with the federal standards in designing their warranties.

As I have already indicated, this bill would help make the Song-Beverly Act more coherent, rational and intelligible.

Both those who extend consumer product warranties, and those who receive them, have a vital interest in the coherence, rationality and intelligibility of our laws.

RAE:vc
(4/30/82)

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SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 3560

MAY 15 1982

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

*California Department of Consumer Affairs - sponsor
322-4292: Mary Ann Moore / Richard Elbrecht*

- (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?

AB 3324 (Fenton) - 1980

2. Purpose

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

The lack of accessibility and coherency surrounding a consumer's existing legal remedies for breach of warranty and violation of warranty laws which makes it difficult to understand and enforce the current law. This bill is designed to incorporate all the existing legal remedies in a single section of California's Song-Beverly Act.

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.

see attached

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

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1000 N STREET, SACRAMENTO, CALIFORNIA 95814



June 3, 1982

Honorable Omer Rains
Chairman
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

JUN 4 1982

Dear Senator Rains:

The Department of Consumer Affairs is sponsoring AB 3560 (Tanner), legislation which would amend the Song-Beverly Consumer Warranty Act to provide purchasers of consumer goods with coherent, understandable remedies for violations of California's warranty laws. AB 3560 is scheduled to be heard in your committee on June 15th at 1:30 p.m.

This bill is essentially a consumer law "housekeeping" bill which does not add to existing law any substantive legal obligation that is not already present in consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single location in the Song-Beverly Act the remedies now available under the Act and the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, and the general contract law of California. The range of available legal remedies is broad, yet because they are spread among many different statutes, they are not reasonably accessible.

Specifically, AB 3560 would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of buyers' basic remedies for breach of warranty and violation of the Song-Beverly Act.

We believe the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. It is where the law and its consequences are uncertain that real problems are not resolved or that expensive litigation ensues.

The bill would include within the remedy language an explicit right to recover actual damages for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. These remedies are already conferred by federal law. Conferring Song-Beverly jurisdiction to resolve disputes without finding of willfulness will benefit warrantors as well as consumers. Currently, in order to proceed, consumers and their attorneys must search for proof of "willfulness," focusing less on a constructive approach to dispute resolution than on the motivations of the parties.

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Honorable Omer Rains
Page two

This bill has been carefully developed and will improve our law by promoting voluntary compliance and voluntary settlement of disputes.

Included with this letter is a more comprehensive analysis of AB 3560. Should you wish further information, please contact our Legislative Unit at 322-4292.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members, Senate Judiciary Committee
Assemblywoman Sally Tanner

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AB 3560 (Tanner)
As introduced
Civil Code
RT

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CONSUMER WARRANTIES
-REMEDIES-

HISTORY

Source: Dept. of Consumer Affairs

Prior Legislation: None

Support: Unknown

Opposition: No Known

Assembly floor vote: Ayes 66 - Noes 0.

KEY ISSUE

SHOULD EXISTING REMEDIES FOR THE ENFORCEMENT OF A CONSUMER WARRANTY BE RECODIFIED IN A SINGLE SECTION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT?

PURPOSE

Under existing law remedies for breach of a consumer warranty are found in the Commercial Code, general contract law, and the federal Magnuson-Moss Act, as well as in the Song-Beverly Consumer Warranty Act. No single provision of law states all of these remedies.

This bill would repeal and reenact the remedies provision of the Song-Beverly Act so as to state all existing remedies for the breach of a consumer warranty. The bill would neither add to nor subtract from remedies under existing law.

(More)

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The purpose of the bill is to provide a single section which judges and attorneys may consult in order to find the existing remedies for a breach of a consumer warranty.

COMMENT

1. Need for bill

Plaintiffs point out that provisions regarding the enforcement of promises contained in warranties are presently to be found in four separate areas of the codes. The Commercial Code contains provisions with respect to any warranty, whether or not the buyer of the goods in question is a consumer. The Song-Beverly Act contains provisions applicable only to warranties received by consumers. The federal Magnuson-Moss Act contains similar but not identical provisions to those in Song-Beverly. And, in addition, there are other applicable provisions in those Civil Code sections relating to general contract law.

As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach of warranty cases.

2. Benefit to warrantors

The clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

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First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

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Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

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1 (888) 676-1947**

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CONSENT

SENATE DEMOCRATIC CAUCUS SENATOR PAUL B. CARPENTER Chairman	Bill No.: AB 3560 Amended: Original Author: Tanner (D) Vote Required: Majority Assembly Floor Vote: 66-0
--	---

SUBJECT: Warranties

POLICY COMMITTEE: Judiciary

AYES: (6) Petris, Presley, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

FISCAL EFFECT: None

PROPOSERS: (Verified by author 6-16-82)

Department of Consumer Affairs (sponsor)

OPPOSERS:

ARGUMENTS IN SUPPORT:

Proponents point out that provisions regarding the enforcement of promises contained in warranties are presently to be found in 4 separate areas of the codes. The Commercial Code contains provisions with respect to any warranty, whether or not the buyer of the goods in question is a consumer. The Song-Beverly Act contains provisions applicable only to warranties received by consumers. The federal Magnuson-Moss Act contains similar but not identical provisions to those in Song-Beverly. And, in addition, there are other applicable provisions in those Civil Code sections relating to general contract law.

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ARGUMENTS IN SUPPORT, Continued:

As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach of warranty cases.

The clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

Assembly Bill 3560—An act to add Section 2884 to, and to repeal Sections 1794 and 1795 of, the Civil Code relating to warranties.
Bill read third time.
The bill was called and the bill was passed by the following yeas:
AYES (38)—Senators: Amodeo, Beverly, Bunker, Campbell, Craven, Davis, Dills, Donahoe, Ellis, Foran, Alvarado, Haimsohn, Johnson, Keene, Marks, Mello, Mills, Montoya, Munoz, O'Keefe, Parris, Rains, Richardson, Robbins, Robert, Sandoval, Schmitt, Seymour, Sieroty, Speraw, Stern, and Watson.
NAYS (0)—None.
Approved and transmitted to the Governor.

6-21-82

p. 11182

CK:ga 6-16-82

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As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach of warranty cases.

According to the Senate Judiciary Committee analysis, the clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

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1020 N STREET, SACRAMENTO, CALIFORNIA 95814



ENROLLED BILL REPORT

AGENCY State & Consumer Services	BILL NUMBER AB 3560
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs	AUTHOR Panner
<p><u>SUBJECT:</u> Consumer Warranties: Consolidation of buyers' remedies</p> <p><u>HISTORY, SPONSORSHIP & RELATED LEGISLATION:</u></p> <p>AB 3560 is sponsored by this Department for the purpose of organizing and clarifying existing remedies for breaches of warranty or violations of warranty law. AB 3560 received no opposing testimony or votes.</p> <p><u>ANALYSIS</u></p> <p>A. <u>SPECIFIC FINDINGS</u></p> <p>Existing state and federal laws provide buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. A buyer's remedies for willful breaches of warranty or violations of warranty law are found in the California Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.)</p> <p>Because buyers' rights are located in different statutes, buyers and sellers are sometimes unaware of them, and legal enforcement can be difficult and confusing.</p> <p>AB 3560 would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.]</p> <p>B. <u>FISCAL IMPACT</u></p> <p>None on this Department.</p> <p>C. <u>VOTE</u></p> <p>Assembly: 66-0 Senate: 32-0</p> <p>D. <u>CIVIL & HUMAN RIGHTS IMPACT</u></p> <p>In general, warranty legislation was enacted to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products. Providing buyers</p> <p style="text-align: right;">(cont.)</p>	

RECOMMENDATION:

SIGN

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DEPARTMENT DIRECTOR

DATE

6/24/82

AGENCY SECRETARY

DATE

6/21/82

99D-16 (Rev. 9/81)

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with their remedies would help protect those at a comparative disadvantage in the marketplace. AB 3560 seeks to advance the mutual best interest of all participants in a retail warranty transaction.

E. RECOMMENDATION: Sign

Consolidating existing buyers' remedies in a single provision of California's Song-Beverly Consumer Warranty Act will make them more accessible to all of the parties of a consumer transaction, thereby aiding in the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved.

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MEMBERS

DON SEBASTIANI, Vice Chairman
BYRON SMER
PETER CHACON
RICHARD KATZ
DAVID ELDER
ERNEST KONNYU
CATHIE WRIGHT

MARTHA VALDES
SENIOR CONSULTANT
JAY J. DeFURIA
SENIOR CONSULTANT
MARGARET H. MARR
ASSOCIATE CONSULTANT
MARY VASOS
COMMITTEE SECRETARY

CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE

on

CONSUMER PROTECTION AND
TOXIC MATERIALS

ROOM 4146 STATE CAPITOL
(916) 445-0991

CHAIRWOMAN

SALLY TANNER

June 29, 1982



Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Brown:

Re: A.B. 3561: Consumer warranties - disclosure
of terms

Assembly Bill 3561 has been passed by the Legislature and is before you for your approval and signature.

Currently, both California's Song-Beverly Consumer Warranty Act and the federal Magnuson-Moss Act with its Federal Trade Commission regulations require the disclosure of the terms and conditions of consumer product warranties. However, the subsequently enacted and more detailed disclosure provisions of federal law have preempted Song-Beverly disclosure requirements. As a result, while Song-Beverly purports to require full warranty disclosure, its provisions no longer have that legal effect.

A.B. 3561 would amend the Song-Beverly Act's disclosure provision to explicitly require warrantors to comply with the standards set forth in federal law. Thus, the disclosure provisions of Song-Beverly would once again be legally enforceable. Additionally, this amendment would help make California businesses aware of the existence of the federal disclosure requirements and aid in their voluntary compliance.

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Honorable Edmund G. Brown, Jr.

Page Two

A.B. 3561 was introduced at the request of the Department of Consumer Affairs which supports its enactment. The bill has received no opposition during its passage in the Legislature.

I respectfully request your approval and signature.

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:mlv

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ENROLLED BILL MEMORANDUM TO GOVERNOR		DATE	July 2, 1982
BILL NO.	AB 3560	AUTHOR	Tanner

Vote—Senate Unanimous

Ayes— 32
Noes— 0

Vote—Assembly Unanimous

Ayes— 66
Noes— 0

AB 3560 - Tanner

Existing law provides buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. A buyer's remedies for willful breaches of warranty or violations of warranty law are found in the California Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.

This bill would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.

SPONSOR

Department of Consumer Affairs

OPPOSITION

No known opposition

FISCAL IMPACT

None

Recommendation	APPROVE
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Memorandum

To : STAFF ATTORNEYS
Legal Services Unit

Date : August 11, 1982

File No.: L-80-214

FILE COPY

From : DIVISION OF CONSUMER SERVICES -- Legal Services Unit

Subject: 1982 AMENDMENTS TO CALIFORNIA SONG-BEVERLY CONSUMER WARRANTY ACT.

In addition to the notorious "California Lemon Law," the Legislature has also adopted (without fanfare) two other substantive amendments to the Song-Beverly Consumer Warranty Act, which originated here.

1. AB 3560 (Tanner), which has consolidated Civil Code sections 1794 and 1794.2 into a single section which now accords an award of reasonable attorneys' fee to the prevailing buyer without regard to proof of "willfulness." Among other things, the new amended section 1794 also confers a clear-cut right to recover "the cost of repairs necessary to make the goods conform," thus ending the debate on that question, at least in California.
2. AB 3561 (Tanner), which has amended the disclosure provisions of the Song-Beverly Consumer Warranty Act to explicitly include the disclosure requirements contained in the federal Magnuson-Moss Consumer Warranty Act and in the regulations of the Federal Trade Commission adopted pursuant thereto. Violations of the federal disclosure requirements will now a basis for suspension of the licenses of motor vehicle dealers who fail to comply with the federal requirements, and will also give rise to a private right of action under Civil Code section 1794.


RICHARD A. ELBRECHT
Supervising Attorney

RAE:vc
Enclosures

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CHAPTER 385

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

[Approved by Governor July 4, 1982. Filed with
Secretary of State July 4, 1982.]

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

SECTION 1. Section 1794 of the Civil Code is repealed.

SEC. 2. Section 1794 is added to the Civil Code, to read:

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

(b) The measure of the buyer's damages in an action under this section shall be as follows:

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

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

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

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

SEC. 3. Section 1794.2 of the Civil Code is repealed.

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CALIFORNIA LEGISLATURE
1981-82 REGULAR SESSION
1981-82 FIRST EXTRAORDINARY SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1982

and

1979-1982 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

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The bill would declare legislative intent with regard to youth bus regulations and would require the Office of Administrative Law to expedite its review of those regulations.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

(3) The bill would take effect immediately as an urgency statute, to be operative on the date the regulations adopted by the Department of the California Highway Patrol governing youth buses become effective, but not sooner than October 1, 1982, nor later than January 1, 1983.

Ch. 384 (AB 3761) N. Waters. Firearms.

Under existing law, a law enforcement agency that has custody of firearms or parts of any firearms which are subject to destruction pursuant to law, may, in lieu of destroying them, retain and use them, or turn them over to certain criminalistic laboratories, as specified.

This bill would also authorize such a law enforcement agency to release them to another law enforcement agency, as specified, upon approval of a court.

Ch. 385 (AB 3560) Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

Ch. 386 (AB 2133) Mountjoy. Construction contracts: liability.

Existing law regarding construction contracts generally prohibits agreements to indemnify the promisee against liability for damages for death or bodily injury, injury to property, or design defects or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee. However, those provisions do not prevent a party to a construction contract and the owner or party on whose account the contract is performed from agreeing with respect to the allocation or limitation of liability as between the parties for design defects or for liability of the promisee to the promisor arising out of or related to the contract.

This bill, in addition, would specify that any provision regarding a construction contract which purports to impose on the contractor or relieve a public agency from liability for the active negligence of the public agency are void and unenforceable.

Ch. 387 (AB 2603) Torres. Food: duck.

Under existing law, restaurants and itinerant restaurants are required to maintain certain perishable food or beverage at or below a temperature of 45° Fahrenheit. Existing law requires retail food production and marketing establishments to maintain potentially hazardous foods, as defined, to be kept, displayed, or maintained at or below a temperature of 45° or at or above a temperature of 140° Fahrenheit, except during reasonable periods of preparation, handling, or transportation.

This bill would exempt whole Chinese-style roast duck, as defined, from those provisions for a period not to exceed 4 hours after the duck is prepared.

This bill would also exempt raw duck in restaurants for a period not to exceed 2 hours if the food will subsequently be cooked at or above a temperature of 350° Fahrenheit for at least 60 minutes.

This bill would take effect immediately as an urgency statute.

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VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1983-84 REGULAR SESSION
1983-84 FIRST EXTRAORDINARY SESSION
1983-84 SECOND EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 6, 1982
Recessed December 8, 1982
Recessed March 24, 1983
Recessed July 19, 1983
Recessed September 19, 1983
Recessed April 12, 1984
Recessed July 6, 1984
Reconvened January 3, 1983
Reconvened April 4, 1983
Reconvened August 15, 1983
Reconvened January 3, 1984
Reconvened April 23, 1984
Reconvened August 6, 1984
Adjourned August 31, 1984
Adjourned Sine Die November 30, 1984
Legislative Days..... 262

HON. WILLIE L. BROWN JR.
Speaker

HON. FRANK VICENCIA
Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. TOM BANE
Assistant-Speaker pro Tempore

HON. ROBERT W. NAYLOR
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

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A.B. No. 1997—Tanner and Papan (Senator Craven, coauthor).

An act to add Section 6018.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

1983

- Mar. 4—Read first time. To print.
 Mar. 8—From printer. May be heard in committee April 7.
 Mar. 22—Referred to Com. on REV. & TAX.
 May 4—From committee chairman, with author's amendments: Amend, and re-refer to Com. on REV. & TAX. Read second time and amended.
 May 5—Re-referred to Com. on REV. & TAX.
 May 10—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred. (Ayes 13. Noes 0.) (May 9).
 June 8—From committee: Do pass. (Ayes 16. Noes 2.) (June 7).
 June 9—Read second time. To third reading.
 June 15—Read third time, passed, and to Senate. (Ayes 69. Noes 2. Page 5704.)
 June 16—In Senate. Read first time. To Com. on RLS. for assignment.
 June 23—Referred to Com. on REV. & TAX.
 July 7—From committee: Do pass, and re-refer to Com. on FIN. Re-referred. (Ayes 5. Noes 2.).
 Aug. 16—From committee: Do pass. (Ayes 9. Noes 0.).
 Aug. 17—Read second time. To third reading.
 Aug. 18—Read third time, passed, and to Assembly. (Ayes 27. Noes 0. Page 5648.)
 Aug. 18—In Assembly. To enrollment.
 Aug. 22—Enrolled and to the Governor at 2 p.m.
 Aug. 31—Approved by the Governor.
 Aug. 31—Chaptered by Secretary of State - Chapter 605, Statutes of 1983.

A.B. No. 1998—Tanner.

An act to amend Sections 1795.1, 1795.5, and 1795.6 of the Civil Code, relating to consumer warranties.

1983

- Mar. 4—Read first time. To print.
 Mar. 8—From printer. May be heard in committee April 7.
 Mar. 22—Referred to Com. on C.P. & T.M.
 May 5—From committee chairman, with author's amendments: Amend, and re-refer to Com. on C.P. & T.M. Read second time and amended.
 May 9—Re-referred to Com. on C.P. & T.M.
 May 12—From committee: Do pass. To Consent Calendar. (May 10).
 May 16—Read second time. To Consent Calendar.
 May 19—Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 4139.)
 May 19—In Senate. Read first time. To Com. on RLS. for assignment.
 May 31—Referred to Com. on INS., CL. & CORPS.
 Aug. 18—From committee: Do pass. To Consent Calendar.
 Aug. 22—Read second time. To Consent Calendar.
 Aug. 25—Read third time, passed, and to Assembly. (Ayes 39. Noes 0. Page 6006.)
 Aug. 29—In Assembly. To enrollment.
 Aug. 30—Enrolled and to the Governor at 2 p.m.
 Sept. 9—Approved by the Governor.
 Sept. 11—Chaptered by Secretary of State - Chapter 728, Statutes of 1983.

Introduced by Assemblywoman Tanner

March 4, 1983

An act to amend Sections 1795.1 and 1795.5 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as introduced, Tanner. Consumer warranties. Specified provisions of existing law provide for consumer warranty protection.

This bill would make certain technical nonsubstantive changes in those provisions.

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 1795.1 of the Civil Code is
- 2 amended to read:
- 3 1795.1. This chapter shall apply to any equipment or
- 4 mechanical, electrical, or thermal component of a system
- 5 designed to heat, cool, or otherwise condition air, but,
- 6 *with that exception*, shall not apply to the system as a
- 7 whole where such a system becomes a fixed part of a
- 8 structure.
- 9 SEC. 2. Section 1795.5 of the Civil Code is amended
- 10 to read:
- 11 1795.5. Notwithstanding the provisions of subdivision
- 12 (a) of Section 1791 defining consumer goods to mean
- 13 "new" goods, the obligation of a distributor or retail seller
- 14 of used consumer goods *in a sale in which an express*
- 15 *warranty is given* shall be the same as that imposed on

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1 manufacturers under this chapter in a sale in which an
2 express warranty is given, except:

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

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

12 (c) The duration of the implied warranty of
13 merchantability and where present the implied warranty
14 of fitness with respect to used consumer goods sold in this
15 state, where the sale is accompanied by an express
16 warranty, shall be coextensive in duration with an express
17 warranty which accompanies the consumer goods,
18 provided the duration of the express warranty is
19 reasonable, but in no event shall such implied warranties
20 have a duration of less than 30 days nor more than three
21 months following the sale of used consumer goods to a
22 retail buyer. Where no duration for an express warranty
23 is stated with respect to such goods, or parts thereof, the
24 duration of the implied warranties shall be the maximum
25 period prescribed above.

26 (d) The obligation of the distributor or retail seller
27 who makes express warranties with respect to used goods
28 that are sold in this state, shall extend to the sale of all
29 such used goods, regardless of when such goods may have
30 been manufactured.

000115

Volume 17, Session 1997-98, Chapter 1793.5, Section 1793.5, California District Court of Appeal Division 2.

DEPARTMENT Consumer Affairs	AUTHOR Tanner	BILL NUMBER AB 1998
SPONSORED BY Author	RELATED BILLS AB 3374 ('81-82)	DATE LAST AMENDED Original

SUMMARY

- 1 Description
- BACKGROUND
- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination
- FISCAL IMPACT ON STATE BUDGET
- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 Other Fiscal
- SOCIO-ECONOMIC IMPACT
- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development
- INTERESTED PARTIES
- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments
- RECOMMENDATION JUSTIFICATION
- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended

SUMMARY

AB 1998, authored and sponsored by Assemblywoman Sally Tanner, will eliminate ambiguities in two important provisions of the Song-Beverly Consumer Warranty Act -- the provision exempting certain air conditioning and heating equipment from the scope of the Act, and the provision defining the applicability of the Act to used-car sales.

A. BACKGROUND

1. Clarification of Exemption of Air Conditioning and Heating Equipment

Chapter 991, Statutes of 1978, which originated as AB 3374 (Lockyer), a bill amending a variety of sections of the Song-Beverly Act, also amended Civil Code Section 1795.1.

Prior to the adoption of AB 3374, Civil Code Section 1795.1 had provided as follows:

"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."

AB 3374 amended Civil Code 1795.1 to read as follows:

"This chapter shall apply to any equipment or mechanical, electrical, or thermal components of a system designed to heat, cool, or otherwise condition air, but shall not apply to the system as a whole where such a system becomes a fixed part of a structure."

The author of AB 3374, Assemblyman Lockyer, as well as the Department of Consumer Affairs, has received a relatively large volume of inquiries concerning the meaning and effect of Civil Code Section 1795.1 as amended by AB 3374.

000116 (cont.)

STATE-MANDATED LOCAL PROGRAM

Yes No

\$ _____

Department Director Position <input checked="" type="checkbox"/> S <input type="checkbox"/> No Position <input type="checkbox"/> O <input type="checkbox"/> S If Amended <input type="checkbox"/> N <input type="checkbox"/> O Unless Amended	Agency Secretary Position <input type="checkbox"/> S <input type="checkbox"/> No Position <input type="checkbox"/> O <input type="checkbox"/> S If Amended <input type="checkbox"/> N <input type="checkbox"/> O Unless Amended	Governor's Office Use Position Noted Position Approved Position Disapproved By: _____ Date: _____
DEPARTMENT DIRECTOR: <i>Marie A. S. [Signature]</i>	DATE: <i>4/24/83</i>	AGENCY SECRETARY: JANET L. KING Deputy Secretary, Legislation
		DATE: <i>5-5-83</i>

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

The 1978 revision of Civil Code 1795.1 was a compromise worked out at one of the hearings on AB 3374. At that hearing, a representative of the heating and air conditioning industry acknowledged that new equipment furnished to a consumer should be subject to the Act, but that the manufacturer should not be held to be responsible for either general performance in a particular installation or for defects originating in its mode of installation (e.g., in the interconnecting parts). The amended version of AB 3374 was an attempt to articulate a compromise reflecting that position. The idea was that particular items would be covered, but that the Act should not apply to the system as a whole where the system becomes a fixed part of a structure.

The inquiries received by the Department of Consumer Affairs indicate that one of the principal areas of misunderstanding is the very question of whether the equipment itself is subject to the Act. It is very clear both from the language of present Civil Code Section 1795.1 and its legislative history that heating and air conditioning equipment, as such, is within the scope of the Act, but subject to one exception only: namely, that the Act shall apply only to such equipment, and shall not apply to the system as a whole, where such a system becomes a fixed part of a structure.

This bill would help clarify the intent and effect of Civil Code Section 1795.1 by inserting the words "with that exception" just before the final phrase, "shall not apply to the system as a whole where such a system becomes a fixed part of a structure." The addition of the words "with that exception" would make it clear that the first part of Civil Code 1795.1, stating that the Act "shall apply to any equipment or mechanical, electrical, or thermal component" takes precedence over the statement that the Act "shall not apply to the system as a whole", etc.

The clarification of the Act, by this means, will aid in compliance by making it clearer to both suppliers of heating and air conditioning equipment, and consumers, that the equipment itself is covered by the Act, but that the system as a whole (with that exception) is not.

2. Applicability to Used Product Sales

AB 1998 would amend Civil Code 1795.5 by moving the phrase, "in a sale in which an express warranty is given", from its present position to another (see the bill at page 1, lines 14-15, and page 2, lines 1-2).

The present version of Civil Code Section 1795.5 was among the amendments to the Song-Beverly Act resulting from AB 3374. Prior to the 1978 revision, the introductory paragraph to Civil Code Section 1795.5 read as follows:

"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:...."

The Department of Consumer Affairs has received a number of inquiries concerning the meaning and effect of the introductory paragraph to Civil Code

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

Section 1795.5 as amended in 1978.

The purpose of the 1978 amendment was to make it clear that sales of used cars were subject to the Act in all cases in which a written warranty was provided. It had been the practice of some used car dealers to sell a used car with a written warranty provided by a third-party warrantor and take a position that the sale transaction, including the warranty transaction, was outside the scope of the Act because the used car dealer had not "made" the written warranty. The theory was that since the written warranty had been given by a third-party warrantor, the car dealer had not "made" the warranty and, by the language of the introductory paragraph to Civil Code Section 1795.5, the Act therefore did not apply.

The 1978 amendment to the introductory paragraph to Section 1795.5 was designed to make it clear that the obligation of a used car dealer in any sale in which a written warranty is given by the seller or any third party is the same as that imposed on manufacturers in sales in which a written warranty is given. However, inserting the phrase "in a sale in which an express warranty is given" after the words "imposed on manufacturers under this chapter" led some readers to assume that in a used car sale in which a written warranty was either given or not given, the used car dealer had the same obligations as those imposed on a manufacturer in a sale in which a written warranty was given. It is clear that that could not have been the intended meaning, since it would be impossible for a car dealer in which no written warranty was given to have the same obligations as a manufacturer in a sale in which a written warranty was given; the warranty itself is the focus of the manufacturer's responsibilities to the buyer, and it is not meaningful to require a used car dealer to assume those same responsibilities where there is no warranty to form the basis thereof.

The amendment to Civil Code Section 1795.5 that is proposed by AB 1998 would carry out the legislative purpose of the 1978 amendment by making it clear that (a) the seller of a used product has duties under the Act only in those sales in which a written warranty is given, and (b) such written warranty may be one given by either the seller or a third-party warrantor. As before the 1978 amendment, the Act would not apply to sales of used products in which no written warranty was given; and in contrast to the version that existed prior to the 1978 amendment, the Act would apply to sales of used products in which a written warranty was given, even though the written warranty was not given by the seller.

B. FISCAL IMPACT ON STATE BUDGET

None.

C. SOCIO-ECONOMIC IMPACT

AB 1998 will assist consumers and businesses to more readily understand the existing provisions of the Song-Beverly Consumer Warranty Act.

D. INTERESTED PARTIES

None on record.

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E. RECOMMENDATION JUSTIFICATION

This Department recommends a SUPPORT position because AB 1998 makes technical clarifications which will eliminate ambiguities in existing law.

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MJN/427

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

AMENDED IN ASSEMBLY MAY 5, 1983

CALIFORNIA LEGISLATURE—1983-84 REGULAR SESSION

ASSEMBLY BILL

No. 1998

Introduced by Assemblywoman Tanner

March 4, 1983

An act to amend Sections 1795.1 and 1795.5, 1795.5, and 1795.6 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Tanner. Consumer warranties.

(1) Specified provisions of existing law provide for consumer warranty protection.

This bill would make certain technical nonsubstantive changes in those provisions.

(2) Existing law provides that every warranty period for consumer goods selling for \$50 or more shall be tolled between the time of delivery of goods for service or notification of nonconformity pursuant to specified provisions, and the time of repair, as specified.

This bill would change a reference regarding notification of nonconformity to a provision relating to notice of nonconformity where the buyer is unable to return the goods to the retailer.

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 1795.1 of the Civil Code is
- 2 amended to read:
- 3 1795.1. This chapter shall apply to any equipment or
- 4 mechanical, electrical, or thermal component of a system

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MJN/428

000120

4th District Court of Appeals Division 2

1 designed to heat, cool, or otherwise condition air, but,
2 with that exception, shall not apply to the system as a
3 whole where such a system becomes a fixed part of a
4 structure.

5 SEC. 2. Section 1795.5 of the Civil Code is amended
6 to read:

7 1795.5. Notwithstanding the provisions of subdivision
8 (a) of Section 1791 defining consumer goods to mean
9 "new" goods, the obligation of a distributor or retail seller
10 of used consumer goods in a sale in which an express
11 warranty is given shall be the same as that imposed on
12 manufacturers under this chapter except:

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

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

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

36 (d) The obligation of the distributor or retail seller
37 who makes express warranties with respect to used goods
38 that are sold in this state, shall extend to the sale of all
39 such used goods, regardless of when such goods may have
40 been manufactured.

1 SEC. 3. Section 1795.6 of the Civil Code is amended
2 to read:

3 1795.6. (a) Every warranty period relating to an
4 implied or express warranty accompanying a sale or
5 consignment for sale of consumer goods selling for fifty
6 dollars (\$50) or more shall automatically be tolled for the
7 period from the date upon which the buyer either (1)
8 delivers nonconforming goods to the manufacturer or
9 seller for warranty repairs or service or (2), pursuant to
10 subdivision (c) of Section 1793.2 or subdivision ~~(e)~~ (e) of
11 Section 1793.3, notifies the manufacturer or seller of the
12 nonconformity of the goods up to, and including, the date
13 upon which (1) the repaired or serviced goods are
14 delivered to the buyer, (2) the buyer is notified the goods
15 are repaired or serviced and are available for the buyer's
16 possession or (3) the buyer is notified that repairs or
17 service is completed, if repairs or service is made at the
18 buyer's residence.

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

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

38 (d) Every manufacturer or seller of consumer goods
39 selling for fifty dollars (\$50) or more shall provide a
40 receipt to the buyer showing the date of purchase. Every

000121

4th District Court of Appeal Division 2

- 1 manufacturer or seller performing warranty repairs or
- 2 service on the goods shall provide to the buyer a work
- 3 order or receipt with the date of return and either the
- 4 date the buyer was notified that the goods were repaired
- 5 or serviced or, where applicable, the date the goods were
- 6 shipped or delivered to the buyer.

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MEMBERS:

THE SONG-BEVERLY ACT PROVIDES SPECIFIC, LEGAL WARRANTY RIGHTS AND OBLIGATIONS FOR MANUFACTURERS, DISTRIBUTORS, SELLERS, WARRANTORS AND PURCHASERS OF CONSUMER GOODS.

AB 1998 SIMPLY MAKES TECHNICAL AMENDMENTS IN ORDER TO TO CLEAR UP AWKWARD WORDING IN THE EXISTING LAW THAT HAS LED TO SOME CONFUSION ABOUT THE LAW'S PROPER MEANING.

THE BILL ALSO CORRECTS AN ERRONEOUS CROSS-REFERENCE IN EXISTING LAW INADVERTENTLY OVERLOOKED WHEN PROVISIONS OF THE SONG-BEVERLY ACT WERE AMENDED IN 1976.

THERE IS NO OPPOSITION TO THIS BILL.

I ASK FOR AN AYE VOTE.

(THIS BILL WAS DEVELOPED BY MY COMMITTEE STAFF)

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MJN/431

ASSEMBLY COMMITTEE ON CONSUMER
PROTECTION AND TOXIC MATERIALS

AB 1998

Assemblywoman Sally Tanner, Chairwoman

HEARING DATE:

AB 1998 (Tanner), as amended May 5, 1983

5/10/83

SUBJECT: Consumer Warranties: technical clarifications.

DIGEST:

California's Song-Beverly Consumer Warranty Act provides specific, legal warranty rights and obligations for manufacturers, distributors, sellers, warrantors and purchasers of consumer goods.

This bill would amend the Act to:

1. Add the language: "with that exception" - to clarify an existing provision that states that the Act applies to components of heating and/or air conditioning systems, but not to the entire system as a whole when its attached to a structure.
2. Relocate the language: "in a sale in which an express warranty is given" - to clarify an existing provision that states that the warranty obligations of the distributor or retail seller of expressly warranted used consumer goods are the same as those of a manufacturer of new consumer goods.
3. Corrects an erroneous cross-reference in an existing provision relating to tolling (extension) of the warranty period so that it properly references the appropriate provisions concerning buyer's notification to the retailer of a defect.

FISCAL: None. This is not a fiscal bill.

STAFF COMMENTS:

1. This is a technical "clean-up" bill.
2. The author is sponsoring this bill in order to clear up some awkward wording in the existing law that has led to some confusion about that law's proper meaning. The bill will also correct an error in existing law (a cross-reference) inadvertently overlooked when provisions of the Song-Beverly Act was amended in 1976.

CONSULTANT

BILL NO.

JAY J. DeFURIA

AB 1998

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MJN/432

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS
BACKGROUND INFORMATION REQUESTED

ON BILL NUMBER

AB 199R

1. SOURCE

(A) WHAT GROUP, ORGANIZATION, GOVERNMENTAL AGENCY, OR OTHER INSTITUTION IF ANY, REQUESTED THE INTRODUCTION OF THE BILL? PLEASE LIST THE REQUESTOR'S TELEPHONE NUMBER, OR IF UNAVAILABLE, THE ADDRESS.

None - author's bill

(B) WHICH GROUPS, ORGANIZATIONS, OR GOVERNMENTAL AGENCIES HAVE CONTACTED YOU IN SUPPORT OF, OR IN OPPOSITION TO, YOUR BILL?

(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?

Song - Beverly Consumer Warranty Act

2. PURPOSE

WHAT PROBLEM OR DEFICIENCY UNDER EXISTING LAW DOES THE BILL SEEK TO REMEDY?

Technical cleanup bill - see attached analysis from Assembly Comm. on Consumer Protection & Toxic Materials Comm.

3. WHO IS THE CONTACT PERSON IN THE AUTHOR'S OFFICE?

Jay DeFuria

IF YOU HAVE ANY OTHER INFORMATION CONCERNING THE BILL, PLEASE ENCLOSE A COPY OF IT OR STATE WHERE THE INFORMATION OR MATERIAL IS AVAILABLE. THE COMMITTEE MEETS ON THE FIRST AND THIRD WEDNESDAYS OF EACH MONTH. IF YOU HAVE ANY QUESTIONS CONCERNING THE COMMITTEE'S HANDLING OF THIS BILL, PLEASE CONTACT SHELDON DAVIDOW OR LILLIAN KOPPELMAN.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS, ROOM 5122. WE WILL BE UNABLE TO SET YOUR BILL FOR HEARING UNTIL THIS SHEET IS RETURNED.

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DATE SENT: 6-1-83

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MJN/433

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SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1998, (Tanner), As Amended May 5, 1983
Civil Code

Source: Author
Prior Legislation:
Support: No Known
Opposition: No Known

SUBJECT

Consumer Warranties: Technical Clarifications

DIGEST

1] Description: AB 1998 makes the following technical and nonsubstantive clarification amendments to the Song-Beverly Consumer Warranty Act:

(1) Add the language: "with that exception" - to clarify an existing provision that states that the Act applies to components of heating and/or air conditioning systems, but not to the entire system as a whole when it's attached to a structure.

(2) Relocate the language: "in a sale in which an express warranty is given" - to clarify an existing provision that states that the warranty obligations of the distributor or retail seller of expressly warranted used consumer goods are the same as those of a manufacturer of new consumer goods.

(3) Corrects an erroneous in an existing provision relating to tolling of the warranty period so that it properly references the appropriate provisions concerning buyer's notification to the retailer of a defect.

2] Background: California's Song-Beverly Consumer Warranty Act provides specific, legal warranty rights and obligations for manufacturers, distributors, sellers, warrantors and purchasers of consumer goods.

The author is sponsoring this bill in order to clear up some awkward wording in the existing law that has led to some confusion about that law's proper meaning. The bill will also correct an error in existing law (a cross-reference) inadvertently overlooked when provisions of the Song-Beverly Act was amended in 1976.

FISCAL EFFECT Fiscal Committee: No

JIM CATHCART
Consultant
cjs

ASSEMBLY BILL NO. 1998

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MJN/434

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ANALYST: Mary Anne Moore
Bus. Ph: 322-4292
Home Ph: 454-5354

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY

GEORGE DEUKMEJIAN, Governor



1020 N STREET, SACRAMENTO, CALIFORNIA 95814

ASSEMBLY LIBRARY



NO ANALYSIS REQ'D

Department	Department of Consumer Affairs	Bill Number	AB 1998 (Tanner)
Agency	State and Consumer Services Agency	Date Last Amended	May 5, 1983

- 1. — Analysis not required of this bill - Not within scope of responsibility of this department.
- 2. — Technical Bill - No program or fiscal changes to existing program.
- 3. — Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.
- 4. — Minor or Technical Amendment - Previously submitted analysis still valid. Previously approved position is SUPPORT. See comments below.
- 5. — Watch - Analysis not required at this time, but bill's progress will be monitored. See comments below.

Comments:

OK rw 6/14

This amendment corrects an erroneous cross-reference in an existing provision relating to tolling (extension) of a warranty period so that it properly references the appropriate provisions concerning a buyer's notification to the retailer of a defect.

This is a technical "clean-up" bill to clear up awkward wording in the Song-Beverly Consumer Warranty Act.

Department Director	Date	Agency Secretary	Date
<i>Mari S. Sull</i>	6/7/83	<i>[Signature]</i>	6/13/83

99C-B (Rev. 12/82)

Deputy Secretary, Legislation

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MJN/435

CONSENT

SENATE DEMOCRATIC CAUCUS SENATOR PAUL B. CARPENTER Chairman SENATOR RALPH C. DILLS Vice Chairman	Bill No.: AB 1998 Amended: 5/5/83 Author: Tanner (D) Vote Required: Majority Assembly Floor Vote: 75-0
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SUBJECT: Consumer warranties

POLICY COMMITTEE: Insurance, Claims and Corporations

AYES: (4) Davis, Keene, Deddeh, Robbins

NOES: (0)

SUMMARY OF LEGISLATION:

California's Song-Beverly Consumer Warranty Act provides specific, legal warranty rights and obligations for manufacturers, distributors, sellers, warrantors and purchasers of consumer goods.

This bill makes the following technical and nonsubstantive clarification amendments to the Song-Beverly Consumer Warranty Act:

1. Add the language: "with that exception" - to clarify an existing provision that states that the Act applies to components of heating and/or air conditioning systems, but not to the entire system as a whole when it's attached to a structure.
2. Relocate the language: "in a sale in which an express warranty is given" - to clarify an existing provision that states that the warranty obligations of the distributor or retail seller of expressly warranted used consumer goods are the same as those of a manufacturer of new consumer goods.
3. Corrects an erroneous reference in an existing provision relating to tolling of the warranty period so that it properly references the appropriate provisions concerning buyer's notification to the retailer of a defect.

FISCAL EFFECT:

None.

PROPOSERS: (Verified by author's office 8/18/83)

CONTINUED

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MJN/436

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

OPPONENTS:

ARGUMENTS IN SUPPORT:

The author states that this bill will clear up some awkward wording in the existing law that has led to some confusion about that law's proper meaning. The bill will also correct an error in existing law (a cross-reference) inadvertently overlooked when provisions of the Song-Beverly Act were amended in 1976.

AYES—78

Agnos
Alatorre
Allen
Areias
Bader
Baker
Bane
Bates
Bergeson
Bradley
Brown, D.
Campbell
Chacon
Clute
Condit
Connelly
Cortese
Costa
Davis

Elder
Farr
Felando
Filante
Floyd
Frazee
Frizzelle
Goggin
Hannigan
Harris
Hauser
Hayden
Herger
Hill
Hughes
Isenberg
Johnson
Johnston
Jones

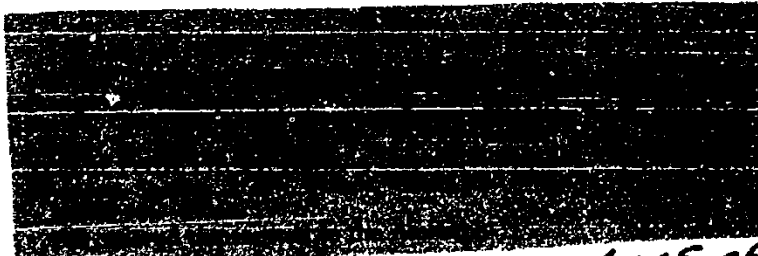
Katz
Kelley
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Klebs
Konyu
La Follette
Lancaster
Leonard
Lewis
Margolin
McAlister
McClintock
McJannet
Molina
Moore
Morrhead
Mountjoy
Naylor
Nolan

O'Connell
Papan
Peace
Robinson
Rogers
Ross
Seastrand
Sebastiani
Shar
Sching
Tanner
Vasconcellos
Waters, M.
Waters, N.
Wright
Wyman
Young
Mr. Speaker

NOES—None

5-19-83

P 4139



8-25-83

PP 6005, 06

CP:dkw 8/23/83

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1 The author is sponsoring this bill in order to clear up some awkward
 2 wording in the existing law that has led to some confusion about that
 3 law's proper meaning. The bill will also correct an error in existing
 4 law (a cross-reference) inadvertently overlooked when provisions of
 5 the Song-Beverly Act was amended in 1976.

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 7 8-19-83/DW/ksw
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SACRAMENTO
(916) 445-7783

DISTRICT OFFICE ADDRESS
1100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(213) 442-9100

California Legislature

LABOR AND EMPLOYMENT
CHAIRWOMAN:
HAZARDOUS WASTE MANAGEMENT
COUNCIL
MEMBER:
JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES

SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT
CHAIRWOMAN
COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

August 30, 1983

Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Deukmejian:

You have before you for signature Assembly Bill 1998 which makes technical amendments in the Song-Beverly Warranty Act. This Act provides specific, legal warranty rights and obligations for manufacturers, distributors, sellers, warrantors and purchasers of consumer goods.

This bill clears up awkward wording in the existing law which has led to some confusion about the law's proper meaning. It also corrects an erroneous cross-reference in existing law inadvertently overlooked when provisions of the Song Beverly Act were amended in 1976.

There is no opposition to this bill. Therefore, I would appreciate your signing AB 1998 into law.

Sincerely,



SALLY TANNER
Assemblywoman, 60th District

ST/bb

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MJN/440

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

ENROLLED BILL REPORT

Analyst: Mary Anne Moore
 Bus. Ph: 322-4292
 Home Ph: 454-5354

AGENCY: STATE AND CONSUMER SERVICES AGENCY

BILL NUMBER: AB 1998

DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS

AUTHOR: Tanner

SUMMARY

SUMMARY

1 Description

AB 1998 is a technical and nonsubstantive clarification of wording in the Song-Beverly Consumer Warranty Act.

BACKGROUND

A. BACKGROUND

- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

AB 1998 relocates and clarifies phrases in existing consumer law which have resulted in some confusion about the law's proper meaning.

Specifically, AB 1998:

FISCAL IMPACT ON STATE BUDGET

1. Adds the language: "with that exception" - to clarify an existing provision that states that the Act applies to components of heating and/or air conditioning systems, but not to the entire system as a whole when it is attached to a structure.
2. Relocates the language: "in a sale in which an express warranty is given" - to clarify an existing provision that states that the warranty obligations of the distributor or retail seller of expressly warranted used consumer goods are the same as those of a manufacturer of new consumer goods.
3. Corrects an error in an existing provision relating to tolling of the warranty period so that it properly references the appropriate provisions concerning buyer's notification to the retailer of a defect.

- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 Other Fiscal

B. FISCAL IMPACT ON STATE BUDGET

None.

SOCIO-ECONOMIC IMPACT

C. SOCIO-ECONOMIC IMPACT

AB 1998 will assist consumers and businesses to more readily understand the existing provisions of the Song-Beverly Warranty Act.

- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development

INTERESTED PARTIES

D. INTERESTED PARTIES -- None on record.

- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments

RECOMMENDATION JUSTIFICATION

E. RECOMMENDATION

The Department of Consumer Affairs recommends this technical bill be SIGNED.

- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended

VOTE:

Assembly Partisan
R D

Senate Partisan
R

Floor: Consent
 Policy Committee:
 Fiscal Committee:

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Floor: Consent
 Policy Committee:
 Fiscal Committee:

RECOMMENDATION TO GOVERNOR:

SIGN VETO NO POSITION DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR:

DATE:

AGENCY SECRETARY:

DATE:

Maria Subuya-Snell

8/31/83

Jane A. King

9/2/83

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

eliminates a crime or infraction.

CHAPTER 727

An act to amend Section 17533.8 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 9, 1983. Filed with Secretary of State September 11, 1983.]

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

SECTION 1. Section 17533.8 of the Business and Professions Code is amended to read:

17533.8. (a) It is unlawful for any person to offer, by mail, by telephone, in person, or by any other means or in any other form, a prize or gift, with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer such sales presentation.

(b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 728

An act to amend Sections 1795.1, 1795.5, and 1795.6 of the Civil Code, relating to consumer warranties.

[Approved by Governor September 9, 1983. Filed with Secretary of State September 11, 1983.]

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

SECTION 1. Section 1795.1 of the Civil Code is amended to read:

1795.1. This chapter shall apply to any equipment or mechanical, electrical, or thermal component of a system designed to heat, cool,

or otherwise condition air, but, with that exception, shall not apply to the system as a whole where such a system becomes a fixed part of a structure.

SEC. 2. 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, the obligation of a distributor or retail seller of used consumer goods in a sale in which an express warranty is given shall be the same as that imposed on manufacturers 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 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. 3. Section 1795.6 of the Civil Code is amended to read:

1795.6. (a) Every warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or subdivision (e) of Section 1793.3, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.

(b) Notwithstanding the date or conditions set for the expiration of the warranty period, such warranty period shall not be deemed expired if either or both of the following situations occur: (1) after

14th District Court of Appeal Division 2.

000134

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

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

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

CHAPTER 729

An act to add Section 6514.5 to the Government Code, relating to public agencies.

[Approved by Governor September 9, 1983. Filed with Secretary of State September 11, 1983.]

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

SECTION 1. Section 6514.5 is added to the Government Code, to read:

6514.5. Any public agency may enter into agreements with other state agencies pursuant to the provisions of Section 11256.

CHAPTER 730

An act to amend Section 14998.2 of the Government Code, relating to the Motion Picture Council.

[Became law without Governor's signature. Filed with Secretary of State September 12, 1983.]

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

SECTION 1. Section 14998.2 of the Government Code is amended to read:

14998.2. There is in the state government the Motion Picture Council consisting of 17 members. The Governor shall appoint 11 members, the Senate Rules Committee shall appoint three members and the Speaker of the Assembly shall appoint three members. The members of the council appointed by the Governor may include representatives of state and local government, motion picture development companies, employee and professional organizations composed of persons employed in the motion picture industry, and other appropriate members of this or related industries. The Motion Picture Council shall work to encourage motion picture and television filming in California and shall exercise the powers provided in this section of the code and elsewhere in the Government Code. In addition to other duties provided by law, the Motion Picture Council shall also make recommendations to the Department of Economic and Business Development and the agencies of state government on legislative or administrative actions that may be necessary or helpful to maintain and improve the position of the state's motion picture industry in the national and world market.

One of the members appointed by the Senate Rules Committee shall be a Senator and one of the members appointed by the Speaker shall be a member of the Assembly at the time of appointment. Such persons shall be appointed for terms of four years.

Each legislator shall serve a term of four years. The 11 members appointed by the Governor shall serve staggered terms of four years each. Each term shall commence on January 1 and shall expire four years subsequent to the expiration date of the prior term.

CHAPTER 731

An act to add Section 20229 to the Public Contract Code, relating to the San Francisco Bay Area Rapid Transit District.

[Became law without Governor's signature. Filed with Secretary of State September 12, 1983.]

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

SECTION 1. Section 20229 is added to the Public Contract Code, to read:

20229. In order to facilitate the participation of minority-owned and women-owned businesses in nonfederally funded contracts consistent with federally funded contracts, the district may establish for nonfederally funded contracts percentage goals for participation

4th District Court of Appeal Division 2.

CALIFORNIA LEGISLATURE
1983-84 REGULAR SESSION
1983-84 FIRST EXTRAORDINARY SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1983

and

1979-1983 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

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

Ch. 727 (AB 1993) Tanner. Advertising.

Existing law provides that it is a misdemeanor for any person to offer a prize or gift by mail, by telephone, or in person, with the intent to offer a sales presentation, without disclosing such intent at the time of the offer of the prize or gift.

This bill would extend the application of these provisions, with specified exceptions, to any person making such an offer by any other means or in any other form.

This bill would impose a state-mandated local program by creating additional bases for the imposition of criminal penalties.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

Ch. 728 (AB 1998) Tanner. Consumer warranties.

(1) Specified provisions of existing law provide for consumer warranty protection. This bill would make certain technical nonsubstantive changes in those provisions.

(2) Existing law provides that every warranty period for consumer goods selling for \$50 or more shall be tolled between the time of delivery of goods for service or notification of nonconformity pursuant to specified provisions, and the time of repair, as specified.

This bill would change a reference regarding notification of nonconformity to a provision relating to notice of nonconformity where the buyer is unable to return the goods to the retailer.

Ch. 729 (AB 2019) Alatorre. Public agencies.

Existing law provides that public agencies may enter into joint powers agreements. A separate provision of existing law allows state agencies, with the approval of the Director of General Services, to furnish services and materials to other state agencies.

This bill would specify in the provisions governing the authority to enter into joint powers agreements that any joint powers agency may enter into agreements with state agencies pursuant to the above-stated existing law.

Ch. 730 (SB 535) Robbins. Motion Picture Council: membership.

Under existing law, the Motion Picture Council consists of 14 members, 10 appointed by the Governor, 2 appointed by the Senate Rules Committee, and 2 appointed by the Speaker of the Assembly.

This bill would increase the membership to the committee to consist of a total of 17 members, 11 appointed by the Governor, 3 appointed by the Senate Rules Committee, and 3 appointed by the Speaker of the Assembly.

Ch. 731 (AB 2085) Harris. San Francisco Bay Area Rapid Transit District: contracts.

Under existing law, the San Francisco Bay Area Rapid Transit District is required to make the purchase of all supplies, equipment, and materials, and the construction of facilities and works, over specified amounts by competitive bid to the lowest responsible bidder. Programs financially assisted by the federal Department of Transportation are required to incorporate specified affirmative action programs to involve minority business enterprises.

This bill would authorize the district to establish affirmative action programs in nonfederally funded contracts in accordance with the regulations applicable to federally funded programs in effect on January 1, 1983.

Ch. 732 (AB 715) Sher. Conservation and training program.

(1) Existing law authorizes the Director of Corrections to enter into contracts with state or federal public agencies for the performance of conservation projects which are appropriate to the public agencies.

This bill would authorize the director to enter into contracts with local public agencies for those purposes.

(2) Existing law requires the Department of Forestry to utilize prison inmates and wards of the Youth Authority assigned to conservation camps in performing fire preven-

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1985-86 REGULAR SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 3, 1984

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

Legislative Days..... 251

HON. WILLIE L. BROWN JR.
Speaker

HON. FRANK VICENCIA
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

46-AFH-0683

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

A.B. No. 2285—Moore.

An act to amend Sections 1791 and 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

1985

- Mar. 8—Introduced. To print.
 Mar. 11—Read first time.
 Mar. 14—From printer. May be heard in committee April 13.
 Mar. 28—Referred to Com. on CON. PRO.
 April 15—From committee chairman, with author's amendments: Amend, and re-refer to Com. on CON. PRO. Read second time and amended.
 April 16—Re-referred to Com. on CON. PRO.
 May 2—In committee: Hearing postponed by committee.
 May 20—From committee: Amend, and do pass as amended. (Ayes 6. Noes 0.) (May 8).
 May 21—Read second time and amended. Ordered returned to second reading.
 May 22—Read second time. To third reading.
 June 6—Read third time, passed, and to Senate. (Ayes 75. Noes 1. Page 2334.)
 June 6—In Senate. Read first time. To Com. on RLS. for assignment.
 June 13—Referred to Com. on INS., CL. & CORPS.
 June 27—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on INS., CL. & CORPS.
 Aug. 26—From committee: Amend, and do pass as amended. (Ayes 4. Noes 0.)
 Aug. 27—Read second time, amended, and to third reading.
 Sept. 3—Read third time, amended, and returned to third reading.
 Sept. 4—Read third time, passed, and to Assembly. (Ayes 36. Noes 0. Page 3446.)
 Sept. 4—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
 Sept. 9—Senate amendments concurred in. To enrollment. (Ayes 79. Noes 0. Page 4388.)
 Sept. 17—Enrolled and to the Governor at 11 a.m.
 Sept. 26—Approved by the Governor.
 Sept. 27—Chaptered by Secretary of State - Chapter 1047, Statutes of 1985.

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MJN/447

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to add Section 1794.6 to the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as introduced, Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require policies of extended warranty and service contracts purchased or bargained for in the course of purchase of a new or used motor vehicle to be delivered to the purchaser at the time of contract and to provide the purchaser with a means of refund or cancellation and refund, under specified circumstances. The bill would also provide that a repair or loss shall be presumed to be covered under a policy or contract, unless the repair or loss is specifically excluded from coverage, as specified.

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

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

- 1 SECTION 1. Section 1794.6 is added to the Civil
- 2 Code, to read:
- 3 1794.6. (a) Any policy of extended warranty, or
- 4 service contract which is purchased or bargained for in
- 5 the course of the purchase of a new or used motor vehicle
- 6 shall be delivered to the purchaser at the time of contract
- 7 and shall provide the purchaser with a means of total
- 8 refund in the event the covered motor vehicle is

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

1 repossessed, stolen, or otherwise rendered a total loss
2 prior to the expiration of the manufacturer's warranty.

3 (b) The policy of extended warranty or service
4 contract shall specifically list in readily understood
5 language each exclusion from coverage, or it shall be
6 presumed that the repair or loss is covered under the
7 policy or contract.

8 (c) The policy of extended warranty or service
9 contract shall provide the purchaser with a means of
10 cancellation of the policy or contract prior to the date of
11 expiration of the underlying manufacturer's warranty.
12 full refund, less an administrative fee specified at the
13 time of contract, shall be returned to the purchaser who
14 properly cancels within 30 days of receipt of any notice
15 of cancellation. However, if notice of cancellation is
16 received within 21 days from the date of purchase, a full
17 refund without deduction for administrative fees shall be
18 provided.

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LEGISLATIVE ANALYSIS

Business, Transportation and Housing Agency

DEPARTMENT Motor Vehicles	AUTHOR Moore	NUMBER AB 2285
SUBJECT Warranties: motor vehicles: extended warranties and service contracts		AS AMENDED Original

SUMMARY: Require that service contracts which are sold in lieu of, or in addition to, express warranties must disclose exclusions, as well as terms and conditions.

DETAILED ANALYSIS: Existing law, known as the "Song-Beverly Consumer Warranty Act," regulates consumer warranties. A "service contract" is defined as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to maintenance or repair of a consumer product.

This bill specifies that service contracts sold in lieu of, or in addition to, express warranties must disclose exclusions, as well as terms and conditions. This bill would also require that policies of extended warranties and service contracts be delivered to the purchaser at the time of contract.

This bill also provides for a means by which the purchaser may cancel the service contract and receive a refund.

COST ANALYSIS: None to the Department of Motor Vehicles.

LEGISLATIVE HISTORY: This bill is sponsored by the Automobile Club of Southern California.

This department is unaware of any support or opposition to this bill.

Related legislation: SB 1025, Robbins (CH. 1075, Stats. 83) provided that the making of a contract covering only defects of material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing automobiles is not insurance, if the maker of the contract has an insurance policy with an admitted automobile insurer providing "backup" coverage for the contract.

AB 3374, Lockyer (CH. 991, Stats. 78), defined a service contract.

ARGUMENTS AGAINST: None.

POSITION SUPPORT <i>Neutral Opp to Consumer Services</i>	GOVERNOR'S OFFICE
DEPARTMENT <i>Division for Motor</i>	POSITION NOTED <input checked="" type="checkbox"/>
AGENCY Original signed by Allen Goldstein	POSITION APPROVED <input type="checkbox"/>
DATE 5-21-85	POSITION DISAPPROVED <input type="checkbox"/>
DATE JUL 26 1985	

CC: LM 5-15-85

wyc

DMV 22 (REV. 8/80)

BY: <i>Rm</i>	DATE: <i>8/16</i>
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7
AB 2285 (Moore) -- Warranties: motor vehicles

RECOMMENDED POSITION: The Department of Motor Vehicles recommends a position of SUPPORT because this bill would be an enhancement to our consumer complaint endeavors which involve disputes over extended warranty contracts. The requirement that the contracts must disclose exclusions, as well as terms and conditions is of particular importance since consumers will be better informed of what the service contract covers.

Department expert: Dan Graham
Division of Registration and
Investigative Services
323-5521

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Amended: Original

Page 2 0044

MJN/451

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

AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to add Section 1794.6 to amend Section 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require policies of extended warranty and service contracts purchased or bargained for in the course of purchase of a new or used motor vehicle to be delivered to the purchaser at the time of contract and to provide the purchaser with a means of refund or cancellation and refund, under specified circumstances. The bill would also provide that a repair or loss shall be presumed to be covered under a policy or contract, unless the repair or loss is specifically excluded from coverage, as specified.

This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions.

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract is available for inspection prior to the purchase and delivered to the buyer at or before the time of purchase. The bill would also require those contracts to be cancelable by the purchaser under specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.

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State-mandated local program: no.

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

1 SECTION 1. Section 1794.6 is added to the Civil
2 SECTION 1. Section 1794.4 of the Civil Code
3 amended to read:

4 1794.4. Nothing in this chapter shall be construed to
5 prevent the sale of a service contract to the buyer in
6 addition to or in lieu of an express warranty if such that
7 contract fully and conspicuously discloses in simple and
8 readily understood language the terms and, conditions
9 and exclusions of such that contract.

10 SEC. 2. Section 1794.41 is added to the Civil Code, to
11 read:

12 1794.41. No service contract covering any motor
13 vehicle purchased for use in this state may be offered for
14 sale or sold unless all of the following elements exist:

15 (a) The contract shall be available for inspection by
16 the buyer prior to purchase and shall be delivered to the
17 buyer at or before the time of purchase of the contract.

18 (b) The contract shall be cancelable by the purchaser
19 under the following conditions:

20 (1) Unless the contract provides for a longer period
21 within the first 60 days after purchase of the contract, the
22 full amount paid shall be refunded to the purchaser if the
23 purchaser provides a written notice of cancellation to the
24 person specified in the contract.

25 (2) Unless the contract provides for a longer period
26 after the first 60 days, a pro-rata refund, based on either
27 elapsed time or mileage, at the seller's option, shall be
28 made to the purchaser if the purchaser provides a written
29 notice of cancellation to the person specified in the
30 contract. In addition, the seller may assess a cancellation
31 or administrative fee, not to exceed twenty-five dollars
32 (\$25).

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

36 Code, to read:

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1 1794.6. (a) Any policy of extended warranty or
2 service contract which is purchased or bargained for in
3 the course of the purchase of a new or used motor vehicle
4 shall be delivered to the purchaser at the time of contract
5 and shall provide the purchaser with a means of total
6 refund in the event the covered motor vehicle is
7 repossessed, stolen, or otherwise rendered a total loss
8 prior to the expiration of the manufacturer's warranty.

9 (b) The policy of extended warranty or service
10 contract shall specifically list in readily understood
11 language each exclusion from coverage, or it shall be
12 presumed that the repair or loss is covered under the
13 policy or contract.

14 (c) The policy of extended warranty or service
15 contract shall provide the purchaser with a means of
16 cancellation of the policy or contract prior to the date of
17 expiration of the underlying manufacturer's warranty. A
18 full refund, less an administrative fee specified at the
19 time of contract, shall be returned to the purchaser who
20 properly cancels within 30 days of receipt of any notice
21 of cancellation. However, if notice of cancellation is
22 received within 21 days from the date of purchase, a full
23 refund without deduction for administrative fees shall be
24 provided.

4th District Court of Appeal Division 2.

AB-22854

APR 25 1985



JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

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

April 23, 1985

Honorable Gwen Moore
Assemblywoman, 49th District
State Capitol, Room 2117
Sacramento, California 95814

Dear Assemblywoman Moore:

AB 2285 - WARRANTIES

The Attorney General's office supports Assembly Bill 2285.

Existing law has no specific provision governing extended warranty or service contracts purchased in connection with the purchase of a new or used motor vehicle. This bill specifically addresses such contracts, requiring clear notification of the relevant terms and conditions, and providing an express right of cancellation. Our office frequently receives complaints from consumers who have purchased such "protection" stating that the policy is not what they were told and that they cannot understand what exactly is covered by it. AB 2285 will remedy most of these abuses.

If we can be of further assistance in supporting the measure, please let me know.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

ALLEN SUMNER
Senior Assistant Attorney General

AS/jkr

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CONSUMER ADVISORY COUNCIL
1021 "O" STREET, SACRAMENTO, CALIFORNIA 95814
PHONE: (916) 322-0548



AB-2285-7

May 1, 1985

THE HONORABLE GWEN MOORE
State Assembly
State Capitol, Room 2117
Sacramento, CA 95814

MAY 2 - 1985

Dear Gwen,

The Legislative Committee of the State Consumer Advisory Council supports AB 2285 - Warranties: motor vehicles: extended warranties and service contracts.

Auto manufacturers are pushing extended warranties and service contracts, but seldom provide copies of these contracts at the time of purchase.

After a purchase, many consumers discover that their auto salesperson has represented the warranty to cover far more than the actual coverage of the warranty.

On behalf of the Legislative Committee, we applaud you for carrying this important piece of consumer legislation.

Sincerely,

KATHIE J. KLASS
Executive Officer

KJK:srm

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MJN/455

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5/1/85

MS. MOORE:

RE SCHEDULE FOR TOMORROW
3rd reading -
CONSUMER PROTECTION

*AB 421 needs
amends so please
"pass & return"
per Bill*

AB 1326 BD OF ARCHITECT EXAMINERS

Hans Schiller, member of the board, is preparing a statement for you. A copy of the committee analysis is attached.

AB 2285 motor vehicle warranties

I have told the General Motors and Ford representatives that you would put the bill over.

They make a good point that it may not always be protective of the purchaser to require that he/she receive a copy of the contract at the time of purchase. If they have not explained why, I will.

(Of course, it would be good for the purchaser to have a copy, but if it is not effective until after expiration of the auto warranty, then the purchaser should not lose anything by being given 60 days from receipt of the contract to cancel.)

However, they disregard the type of warranty which begins even during the period of the new auto warranty. Perhaps with this type of warranty, the purchaser should be given a copy immediately.

The auto reps also feel that benefits received as well as time or mileage should be considered in computation of a pro-rata refund when a policy is cancelled.

Tom Dunipace, for the sponsor (So. Calif. Auto. Assn. says that auto dealers are making big bucks on service warranties and because of the cost of towing could wipe out the refund.

On other than the two points mentioned above, Ridgeway and Dugally indicate support for the bill.

LABOR AND EMPLOYMENT

AB 613 child rearing leave -- I will have a brief statement for you in the morning. Meanwhile, I am attaching a description of the bill to refresh your memory.

WAYS AND MEANS

ABC BUDGET (See copy of letter -- which has not yet been delivered.)

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[Handwritten signature]
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**JAN RAYMOND
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
1 (888) 676-1947**

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MJN/457

Date of Hearing: 5/2/85

AB 2285

ASSEMBLY CONSUMER PROTECTION COMMITTEE

ROBERT C. FRAZEE, Chairman

AB 2285 (Moore) - As Amended: April 15, 1985

SUBJECT

Warranties: Motor vehicle extended warranties and service contracts - disclosure and refunds.

DIGEST

Existing law:

- 1) Regulates consumer warranties.
- 2) Provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to or in lieu of an express warranty so long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

This bill:

- 1) Would specifically require service contracts sold in addition to, or in lieu of, express warranties to disclose its exclusions as well as its terms and conditions.
- 2) Would prohibit the offering or sale of motor vehicle service contracts unless the contract is available for inspection prior to the purchase and is delivered to the buyer before or at the time it is purchased.
- 3) Would require motor vehicle service contracts to be cancelable by the buyer and would provide for either full or pro rata refunds, as specified.

FISCAL EFFECT

None. This is not a fiscal bill.

COMMENTS

- 1) This bill is sponsored by the Automobile Club of Southern California and is supported by the Attorney General. Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand exactly what the contract covers and excludes, and that the contracts are not what they were represented to be.

000149

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MJN/458

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The technical nature of an automobile's mechanical parts and operation, and the subjectivity involved in interpreting various terms (e.g. does coverage for "failure" of a part include malfunctions short of total breakdown or damage caused by covered parts), makes such contracts difficult to understand.

2) Suggested technical amendments.

- a) A provision defining "service contract" would improve the bill since such contracts are sold with varying coverages and under different and sometimes confusing names (e.g. "extended warranty").
- b) While the bill provides purchasers with the legal right to cancel and receive refunds, it does not specifically require these rights to be included in the contract itself.
- c) The bill doesn't provide specific remedies for violations of its requirements and the remedy provision of the Song-Beverly Consumer Warranty Act (Civil Code Section 1794) would not seem to be relevant for such violations.
- d) Adding words such as "for obtaining a full refund" on page 2, at the end of line 25, seems necessary to clarify the applicable time period for partial refunds.
- e) Specifying that the "pro rata" refund (page 2, line 26) is to be at least an evenly declining figure for the time or mileage covered by the contract, might eliminate potential abuse.

Jay J. DeFuria
324-2721

000150

Date of Hearing: 5/8/85

AB 2285

ASSEMBLY CONSUMER PROTECTION COMMITTEE

ROBERT C. FRAZEE, Chairman

AB 2285 (Moore) - As Amended: April 15, 1985

MAY 7 1985

SUBJECT

Warranties: Motor vehicle extended warranties and service contracts - disclosure and refunds.

DIGEST

Existing law:

- 1) Regulates consumer warranties.
- 2) Provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to or in lieu of an express warranty so long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

This bill:

- 1) Would specifically require service contracts sold in addition to, or in lieu of, express warranties to disclose its exclusions as well as its terms and conditions.
- 2) Would prohibit the offering or sale of motor vehicle service contracts unless the contract is available for inspection prior to the purchase and is delivered to the buyer before or at the time it is purchased.
- 3) Would require motor vehicle service contracts to be cancelable by the buyer and would provide for either full or pro rata refunds, as specified.

FISCAL EFFECT

None. This is not a fiscal bill.

COMMENTS

- 1) This bill is sponsored by the Automobile Club of Southern California and is supported by the Attorney General. Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand exactly what the contract covers and excludes, and that the contracts are not what they were represented to be.

- continued -

000151

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MJN/460

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The technical nature of an automobile's mechanical parts and operation, and the subjectivity involved in interpreting various terms (e.g. does coverage for "failure" of a part include malfunctions short of total breakdown or damage caused by covered parts), makes such contracts difficult to understand.

2) Suggested technical amendments.

- a) A provision defining "service contract" would improve the bill since such contracts are sold with varying coverages and under different and sometimes confusing names (e.g. "extended warranty").
- b) While the bill provides purchasers with the legal right to cancel and receive refunds, it does not specifically require these rights to be clearly disclosed in the contract itself.
- c) The bill doesn't provide specific remedies, except for cancellation, for violations of its requirements, and the damage remedy provision of the Song-Beverly Consumer Warranty Act (Civil Code Section 1794) would not seem to be very relevant for such violations.
- d) Adding words such as "for obtaining a full refund" on page 2, at the end of line 25, seems necessary to clarify the applicable time period for partial refunds.
- e) Specifying that the "pro rata" refund (page 2, line 26) is to be at least an evenly declining figure for the time or mileage covered by the contract, might eliminate potential abuse.
- f) The bill's refund provisions seem unclear or indirect regarding who is to make the refunds upon cancellation. It appears to be the seller. If so, adding the words "by the seller" after the word "refunded" on page 2, line 22, and after the word "made" on page 2, line 28, would make this intent clearer.

Jay J. DeFuria
324-2721

000152



**Independent Automobile Dealers
Association of California**
1225 EIGHTH STREET, SUITE 200
SACRAMENTO, CALIF. 95814
TELEPHONE (916) 441-6663

EXECUTIVE BOARD

- Ray Glover - President**
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- Pat Matlack - Chairman**
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(415) 582-3700
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Oakland, CA 94606
(510) 772-3641
- Joe Cal**
Legislative Advocate
225 Eighth St., Suite 200
Sacramento, CA 95814
(916) 441-6161

May 14, 1985

Mr. Tom Dunipace
Southern California Auto Club
1225 8th Street Suite 475
Sacramento, California 95814

Dear Tom:

Pursuant to our conversation of last week in regards to AB 2285, I would like to offer some suggested amendments for your consideration.

It appears that your bill is trying to solve problems with new cars and factory warranties and extended service contracts sold at the time of purchase. As sellers of used cars without factory warranties we would suggest an exclusion for used cars under subsection (b).

There should also be clarifying language relative to refunds if the extended service contract was financed as part of a sales contract. The reason for this is because a lender determines the interest to be charged based on the bottom line of the sales contract. To give a total refund of the extended service contract would be unfair to the lender when he bases his profit on the total price of the sales contract.

Please review these suggestions and let me know if you need any additional information.

Thanking you in advance for your assistance.

Sincerely yours,

Bill
Bill Dohring
Director of Government Relations

BD/dj

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If the proposed legislation (AB2285) is passed in California, the Ford Extended Service Plan Department would have concerns with Section (a) and Section (b).

Section (a). Currently when a customer completes an application for contract, he is mailed a contract certificate approximately 30-60 days after we receive the application. A facsimile of the contract is in the ESP Operating Guide and available for inspection by the customer and we also recommend dealers give the customer a consumer brochure at the time of sale which includes a summary of provisions and exclusions of the contract. To comply with the proposed legislation, ESP would have to print special application forms for the State of California and include the contract provision on the back. This could be done, if necessary.

Section (b-1). This section is of much more concern to us. Our current cancellation policy is in direct violation of the proposed legislation. Our current policy is as follows:

CONTRACT CANCELLATIONS

1985 and Later Plans Backed by Insurance

Refunds for the cancellation of Extended Service Plan contracts are based on the following:

- New Vehicle Plans -- Upon written request to Ford within the first 90 days of the original in-service date of the vehicle, the dealership will terminate the contract and refund the price paid, less \$10, provided all copies of the contract and any membership card(s) are returned. Contracts beyond 90 days will be cancelled on a partial refund basis (sum of the digits method). Refunds will be made to the purchaser or lienholder by the dealership.
- Used Vehicle Plans -- Upon written request, the dealership will terminate the contract on a partial refund basis (sum of the digits method) provided all copies of the contract and membership card(s) are returned. Refunds will be made to the purchaser or the lienholder by the dealership.

Our recommendation is to oppose the legislation as proposed. It would require an exception to our current operating policy, specifically for the State of California. Although we do have the capability of complying, we believe doing so would prove costly in the areas of printing and handling of material, contract processing, and total program administration.

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MJN/463

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author's amendments

AB 2285

- 2 -

State-mandated local program: no.

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

1 ~~SECTION 1. Section 1794.6 is added to the Civil~~
2 ~~SECTION 1. Section 1794.4 of the Civil Code is~~
3 ~~amended to read:~~

4 1794.4. Nothing in this chapter shall be construed to
5 prevent the sale of a service contract to the buyer in
6 addition to or in lieu of an express warranty if ~~such that~~
7 contract fully and conspicuously discloses in simple and
8 readily understood language the terms ~~and~~, conditions,
9 ~~and exclusions of such that~~ contract.

10 ~~SEC. 2. Section 1794.41 is added to the Civil Code, to~~
11 ~~read:~~

12 1794.41. No service contract covering any motor
13 vehicle purchased for use in this state may be offered for
14 sale or sold unless all of the following elements exist:

15 (a) The contract shall be available for inspection by
16 the buyer prior to purchase and

either the contract or a brochure which specifically
describes the terms, conditions, exclusions; and
cancellation provisions of Section 1794.4 and this
section,

17 shall be delivered to the
18 buyer at or before the time of purchase of the contract.

19 (b) The contract shall be cancelable by the purchaser
20 under the following conditions:

(1) Unless the contract provides for a longer period,
receipt

21 within the first 60 days after purchase of the contract, the
22 full amount paid shall be refunded by the seller

to the purchaser if the
23 purchaser provides a written notice of cancellation to the
24 person specified in the contract.

*worked
out w/
Ford & GM*

*added that contract
shall be delivered
w/in 60 days of purchase*

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25 (2) Unless the contract provides for a longer period
for obtaining a full refund ,

26 after the first 60 days, ~~or~~ from receipt of the contract, an
equal *pro-rata refund, based on either*
27 *elapsed time or mileage, at the seller's option, shall be*
28 *made by the seller*

to the purchaser if the purchaser provides a written
29 *notice of cancellation to the person specified in the*
30 *contract. In addition, the seller may assess a cancellation*
31 *or administrative fee, not to exceed twenty-five dollars*
32 *(\$25).*

33 (3) *If the contract was financed with a vehicle*
34 *purchase, the seller may make the refund payable to the*
35 *purchaser, the lender of record, or both.*
36 *Code, to read:*

98 90

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AMENDED IN ASSEMBLY MAY 21, 1985
AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to amend Section 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions.

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract *contains specified disclosures and is available for inspection prior to the purchase, and unless either the contract or a brochure containing specified information regarding the contract is delivered to the buyer at or before the time of purchase.* The bill would also require *these contracts the contract itself to be delivered to the buyer within 60 days after the time of purchase and the contract to be cancelable by the purchaser under specified conditions.*

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

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A 4th District Court of Appeal Division 2.

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

1 SECTION 1. Section 1794.4 of the Civil Code is
2 amended to read:

3 1794.4. Nothing in this chapter shall be construed to
4 prevent the sale of a service contract to the buyer in
5 addition to or in lieu of an express warranty if that
6 contract fully and conspicuously discloses in simple and
7 readily understood language the terms, conditions, and
8 exclusions of that contract.

9 SEC. 2. Section 1794.41 is added to the Civil Code, to
10 read:

11 1794.41. No service contract covering any motor
12 vehicle purchased for use in this state may be offered for
13 sale or sold unless all of the following elements exist:

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

18 ~~(a)~~
19 (b) The contract shall be available for inspection by
20 the buyer prior to purchase and either the contract, or
21 a brochure which specifically describes the terms,
22 conditions, and exclusions of the contract, and the
23 provisions of this section relating to contract delivery,
24 cancellation, and refund, shall be delivered to the buyer
25 at or before the time of purchase of the contract. Within
26 60 days after the date of purchase, the contract itself shall
27 be delivered to the buyer.

28 ~~(b)~~
29 (c) The contract shall be cancelable by the purchaser
30 under the following conditions:

31 (1) Unless the contract provides for a longer period,
32 within the first 60 days after purchase receipt of the
33 contract, the full amount paid shall be refunded by the
34 seller to the purchaser if the purchaser provides a written
35 notice of cancellation to the person specified in the
36 contract.

37 (2) Unless the contract provides for a longer period for
38 obtaining a full refund, after the first 60 days after receipt

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1 of the contract, a pro-rata refund, based on either elapsed
2 time or mileage, at the seller's option as indicated in the
3 contract, shall be made by the seller to the purchaser if
4 the purchaser provides a written notice of cancellation to
5 the person specified in the contract. In addition, the
6 seller may assess a cancellation or administrative fee, not
7 to exceed twenty-five dollars (\$25).

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

4th District Court of Appeal Division 2.

ASSEMBLY THIRD READING

AB 2285 (Moore) - As Amended: May 21, 1985

ASSEMBLY ACTIONS:

COMMITTEE _____ CON. PRO. _____ VOTE 6-0 COMMITTEE _____ VOTE _____

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

DIGEST

Existing law regulates consumer warranties and provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to, or in lieu of, an express warranty as long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

This bill:

- 1) Specifically requires a service contract sold in addition to, or in lieu of, express warranties to disclose its exclusions as well as its terms and conditions.
- 2) Prohibits the offering or sale of service contracts covering motor vehicles purchased for use in California unless:
 - a) The contract is cancellable by the buyer and provides for full and pro rata refunds by the seller under specified conditions.
 - b) The contract is available for inspection by the buyer prior to purchase; the contract or a brochure containing specified disclosures is delivered to the buyer before or at the time of purchase; and the contract itself is delivered to the buyer within 60 days of purchase.
 - c) The contract discloses its terms, conditions, exclusions and the buyer's cancellation and refund rights under the bill, as specified.

FISCAL EFFECT

None

- continued -

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AB 2285

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COMMENTS

- 1) This bill is sponsored by the Automobile Club of Southern California and is supported by the Attorney General. Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand what the contract covers and excludes, and that the contracts are not what they were represented to be.
- 2) The technical nature of an automobile's mechanical parts and operation, and the subjectivity involved in interpreting contract provisions make such contracts difficult to understand. For example, does coverage for "failure" of a part include malfunctions short of total breakdown or damage caused by covered parts?

Jay J. DeFuria
324-2721
5/23/85:aconpro

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AB 2285
Page 2

0046

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SCS Agency

BILL ANALYSIS

Analyst: Gale Baker *ml*
Bus. Ph: 322-4292
Home Ph: 446-0622

Department CONSUMER AFFAIRS	Author Moore	Bill Number AB 2285
Sponsored by Automobile Club of Southern California	Related Bills None	Date Last Amended May 21, 1985

SUMMARY

1 Description

BACKGROUND

- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

FISCAL IMPACT ON STATE BUDGET

- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Assorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 State Mandated

SOCIO-ECONOMIC IMPACT

- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development

INTERESTED PARTIES

- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments

RECOMMENDATION JUSTIFICATION

- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended
- 43 Second Language Attached

BILL SUMMARY

Existing law regulates implied and express warranties on consumer goods, including motor vehicles, sold in California. Existing law does not specifically regulate service contracts on consumer goods, other than to require that all of the terms and conditions be disclosed in the contract.

This bill would require motor vehicle service contracts to contain specified disclosures; to be cancelable by the buyer; to be available for inspection prior to purchase, and to be delivered to the buyer within 60 days after purchase.

Background

The Automobile Club of Southern California, the sponsor of this bill, states that service contract purchasers often complain that they never see or receive the actual contract, that they cannot understand exactly what the contract covers and excludes, and that the contracts are not what they were represented to be.

Some problems have also arisen because some dealers or manufacturers do not allow cancellations. In one case cited by the Automobile Club, a consumer purchased a new Datsun King Cab with an extended service contract. He was involved in an accident in which the truck was totaled 10 days after purchase. When he attempted to cancel the extended service contract, he was told that it was non-cancelable and he was responsible for continued payments under the contract.

AMENDMENT SUMMARY:

Dept. Director Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Agency Secry. Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Governor's Office Use Position Noted <input checked="" type="checkbox"/> Position Approved <input type="checkbox"/> Position Disapproved By: <i>ml</i> Date: <i>5/16</i>
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Department Director <i>Maria Theresa - Snel</i>	Date <i>6/5/85</i>	Agency Secretary Original signed by KAREN L. MORGAN Legislative Coordinator	Date JUN 19 1985
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The sponsor has tailored the cancellation provisions in this bill after the current policies of Ford, GM, and Chrysler. The sponsor has also worked with the Motor Car Dealers Association to achieve a mutually satisfactory solution to the problem.

Specific Findings

This bill would impose the following requirements upon the sale of motor vehicle service contracts:

(1) Existing law requires service contracts to contain all of the terms and conditions of the contract. This bill in addition requires any exclusions to be disclosed.

(2) Service contracts must be available for inspection by the buyer prior to purchase, and either the contract or a brochure describing the terms, conditions and exclusions (and the contract delivery and cancellation rights described below) must be given to the buyer at or before the time of purchase.

(3) If a brochure is provided at the time of purchase in lieu of a contract, the actual contract must be delivered to the buyer within 60 days after purchase.

(4) Unless the contract provides for a longer period (Ford and GM currently allow 90 days), the buyer may cancel the contract within 60 days after receipt of the contract and receive a full refund.

Unless the contract provides for a longer initial cancellation period, the buyer may cancel after the initial 60-day period and receive a prorata refund, based on either time elapsed or mileage. The seller may also assess a cancellation fee, not to exceed \$25.

If the service contract was financed together with a vehicle purchase, the seller may make the refund to the purchaser, the lender, or both.

Notices of cancellation must be made in writing.

Fiscal Impact

None. No state-mandated local program.

Socio-Economic Impact

Current industry practice with regard to cancellation and refunds, contract delivery and contract exclusions varies widely. This bill will standardize these practices and give service contract purchasers protection against "hidden" coverage exclusions and unreasonable cancellation policies.

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Argument

Interested Parties

Proponents: Automobile Club of Southern California
(sponsor)
Attorney General
Ford Motor Corporation

Neutral General Motors
Motor Car Dealers Association
(Northern and Southern California)

Proponents' arguments are set forth in Background, above.

The Independent Automobile Dealers, which represent used car dealers, are not officially opposed to this measure. However, their advocate (Bill Dohring) has expressed concern that some distinctions should be made for service contracts sold in conjunction with used vehicles. He correctly points out that such contracts are usually immediately operative, unlike extended service contracts on new cars, which normally become effective upon the operation of the manufacturer's warranty. Accordingly, it may be unreasonable to allow consumers to cancel contracts relative to used car warranties in exactly the same fashion as those relating to new cars.

However, the proponents are unwilling to take further amendments at this time. They do not want to exempt used car service contracts from the refund provisions of this bill, but state that some kind of cancellation penalty may be worked out with the opposition later on. (There is currently a cancellation penalty allowed under this bill for refunds made after - but not within - the initial cancellation period.)

Recommendation

Abuses in the area of extended service contracts are well known and deserve our attention. Given the present posture of the proponents and used car dealers, we recommend a position of SUPPORT on this bill. While we are sympathetic to some modifications relative to used car sales, the burden should be on that segment of the industry to draft potential amendments for review and consideration. We deem it inappropriate for the Department of Consumer Affairs to be the moving force behind the potential exclusions from the consumer protection provisions of this measure.

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SUPPLEMENTAL ANALYSIS

Business, Transportation and Housing Agency

SUBJECT Warranties: motor vehicles: extended warranties and service	AUTHOR Moore	BILL NUMBER 2285 AS AMENDED 5-21-85
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These amendments prohibit the sale of any service contract unless the contract contains specified disclosures including the buyer's cancellation and refund rights.

These amendments also require that the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions relating to contract delivery, cancellation, and refund be delivered to the buyer at or before the time of purchase of the contract.

These amendments also require that within 60 days after the date of purchase, the contract itself must be delivered to the buyer.

These amendments strengthen the provisions of this bill. Therefore, the department's previously recommended position of ~~error~~ remains valid.

Neutral - Refer to Consumer Services
OK and 8/16

Original signed by Allen Goldstein

JUL 26 1985

BY <i>[Signature]</i> 1-11 6-10-85	DEPARTMENT OF Motor Vehicles	DATE 6-11-85
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DAV 37 (REV 8-83)

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MJN/473

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SAFE FEDERAL CREDIT UNION

JUN 4 1985

May 31, 1985

Hon. Gwen Moore
State Assembly Box Office
State Capital
Sacramento, CA 95814

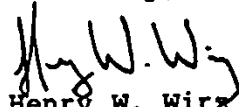
Dear Ms. Moore:

I support Assembly Bill No. 2285. The members of my credit union need legislation to correct this problem. High pressure sales tactics are used to sell warranty contracts to our members, often with little or no disclosure as to the terms of the warranty. The warranties are sold at whatever price the market will bear. Two members purchasing the identical warranty contract may pay significantly different amounts. Usually the warranties are over priced.

At this time a member who wants to cancel an unfair warranty contract has had few options. The warranties are very profitable for the dealership. The members who have tried to cancel a warranty contract have usually been unsuccessful.

Assembly Bill No. 2285 is an important aid to the consumer. I urge all legislators to enact this bill.

Sincerely,


Henry W. Wirz
President/CEO

HWW:pa

cc: Larry Cox
Director of Government Relations
California Credit Union League

Serving Employees of McClellan Air Force Base

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4636 WATT AVENUE NORTH HIGHLANDS, CA 95660-5578
MAILING ADDRESS: P.O. BOX 1057 NORTH HIGHLANDS, CA 95660-9985
MADISON OFFICE: 7475 MADISON AVENUE CITRUS HEIGHTS, CA 95610-7498
ALL OFFICES: (916) 488-3420 SPEECH OR HEARING IMPAIRED: TDD NO. (916) 489-5333

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AB - 2285 -

Independent Automobile Dealers Association of California
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SACRAMENTO, CALIF. 95814
TELEPHONE (916) 441-6663

EXECUTIVE BOARD

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Stockton, CA 95205
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Pat Matlach - Chairman
Desert Motors
18596 D Street
Victorville, CA 92382
(619) 245-5921

Ray Cronin - Vice President
Cronin Motor Company
25718 Mission Boulevard
Hayward, CA 94544
(415) 582-3700

Jerry Cowgill - Vice President
Big J's Used Cars
2440 Thompson Boulevard
Ventura, CA 93003
(805) 652-2021

Gary Dorrel - Vice President
Bankers Auto Storage
121 W. Plaza Boulevard
National City, CA 92050
(619) 477-2191

Ed Houck - Secretary
Standard Rent-a-Car
1122 N. Abby Street
Fresno, CA 93701
(209) 266-9916

Paul Adams - Treasurer
Buy-Rite Motors
698 S. First Street
San Jose, CA 95113
(408) 295-5151

PAST PRESIDENTS

- Pat Matlach, 1983-84
- Larry Brasher, 1982-83
- Tom Field, 1981-82
- Jim McCabe, 1980-81
- Roy Wilhite, 1979-80
- Len Boyd, 1978-79
- Jordan Sugaman, 1977-78
- Bob Dutton, 1976-77
- Tom Kent, 1975-76
- Jim Mitchell, 1974-75
- Vic Snyder, 1973-74
- Frank Hammerer, 1972-73
- Manuel Rogers, 1971-72
- John Hiatt, 1970-71
- Doug Alman, 1969-70
- Bob Scordino, 1968-69
- Lucky Skymie, 1966-68
- Leonard Cravens, 1964-66
- Walt Howey, 1962-64
- Travis Godbold, 1961-62
- Leonard Cravens, 1960-61
- Wendall Anderson, 1959-60
- Dick Rafferty, 1957-59

Carlyle R. Brakensiek
Executive Director

Bill Dohring
Director of Governmental Relations

Margaret E. Taylor
Director of Membership Services
1225 Eighth St. Suite 260
Sacramento, CA 95814
(916) 441-6863

Stan Smith - Agent of Record
Northstate Agency
512 E Twelfth Street
Oakland, CA 94606
(800) 772-3541

AdvoCal
Legislative Advocates
1225 Eighth St., Suite 260
Sacramento, CA 95814
(916) 446-6161

JUN 13 1985

June 12, 1985

Honorable Gwen Moore
Assembly Member
State Capitol
Sacramento, California 95814

Dear Mrs. Moore:

The Independent Automobile Dealers Association of California is opposed to your AB 2285 relating to new cars and factory warranties and extended service contracts sold at the time of purchase. As sellers of used cars without factory warranties, we believe used cars should be excluded under subsection (b) of your bill. We also believe language should be added relative to refunds if the extended service contract was financed as part of a sales contract.

We have offered suggested amendments to the sponsor and have been more than willing to work with them on the necessary clarifying language. However, the sponsor has refused our amendments.

If the above amendments are acceptable to you, the Independent Automobile Dealers Association of California will remove opposition to your bill.

Sincerely yours,

Bill Dohring
Director of Governmental Relations

BD:dj
AB2285

cc: Mr. Tom Dunipace, Southern California Auto Club
Sheila Slaughter, California Bankers Association
Mr. Jim Neff, Neff/Thomas Incorporated

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Handwritten notes:
b/p will date not...
...to the...
...to the...

SINCE 1957, INDEPENDENT AUTO DEALERS WORKING TOGETHER TO BETTER THE INDUSTRY



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MJN/475

National Association



of Independent Insurers

CEB-2285

Small amendment suggested

HOTEL SENATOR BUILDING, 1121 L STREET, SUITE 1024 SACRAMENTO, CALIFORNIA 95814
916/446-2009

June 12, 1985

Samuel J. Sorich
California Counsel

Assemblymember Gwen Moore
State Capitol
Room 2117
Sacramento, CA 95814

RE: AB 2285

Dear Assemblymember Moore:

The National Association of Independent Insurers (NAII) is an association of more than 500 property-casualty insurance companies. Some NAII members provide service contracts for motor vehicles. These companies are very interested in AB 2285.

Our member companies are not opposed to the general purpose of AB 2285. Purchasers of service contracts should be fully informed of the terms of the contracts.

We do, however, have a concern about the bill's provision for a refund when the service contract is cancelled within the first 60 days of receipt of the contract. The bill provides for a full refund when the contract is cancelled. Enforcement of this provision would be unfair in cases where claims have been made under the contract. The purchaser would be getting the benefit of the contract without paying anything. We doubt that you intend this type of unjust enrichment.

Please consider the following amendment to subsection (c) (1) of Section 1794.41 which AB 2285 would add to the Civil Code:

- (1) Unless the contract provides for a longer period, within the first 60 days after purchase of the contract, the full amount paid shall be refunded to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, provided that no claims have been made against the contract.

*As amended 6/12/85
notified as per demand*

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Assemblymember Gwen Moore
June 12, 1985
Page Two

We believe that the addition of the underlined language will improve AB 2285 and will avoid unfair claims for full refunds that could be based on a strict reading of the bill in its present form.

I look forward to your response to our suggested change in AB 2285 and I hope that we can work together to achieve the bill's passage.

Sincerely,



Samuel J. Sorich
California Counsel

SJS:wrs

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JUN 4 1985

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS
ALAN ROBBINS, Chairman

BACKGROUND INFORMATION REQUEST

Measure: AB 2285
Author : Assemblywoman Moore

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
Southern California Automobile Association
(Tom Dunipace 443-2577)
- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
No.
- c. Has there been an interim committee report on the bill? If so, please identify the report.
No.

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

A number of consumers have complained about a lack of information at the time of purchase of a contract or the inability to cancel the contract in the event the motorist is involved in a total loss of the vehicle.

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

See attached.

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

See attached.

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

See attached.

6. List the witnesses you plan to have testify.

Tom Dunipace, Kathy Klass

RETURN THIS FORM TO: SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATION
Phone 445-0825

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MJN/478

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AA 2285

January 25, 1985



RE: Extended Warranty/Service Contracts

I spoke with the consultants regarding the problems our members encounter with extended warranty/service contracts and the frequency of calls regarding this subject.

In my research I found that the foremost problems are the consumers' lack of knowledge about what the contract/warranty covers and how and by whom it is administered.

We get an average of ten calls per month, most calls dealing with whether or not specific parts are covered. In some cases the member has already been denied coverage and they call us to complain. Generally, the member has not yet read the warranty/contract, or they've read it and are unable to determine whether or not coverage should be afforded due to the technical language or a lack of knowledge about mechanical parts. In some cases a part can be listed as a covered item, but the situation in which damage occurred results in exclusion. Though most contracts I have seen are quite specific, the consumer has to be pretty knowledgeable to have a complete understanding of the terms.

Several consultants mentioned the fact that some dealers do not provide the purchaser with a copy of the actual contract at the time of sale. They may provide a brochure or simply have the purchaser sign an application for a service contract to be mailed by the administrator (some members state contracts were never received) at a later date. Some applications look much like a contract and may be misleading or may cause the purchaser to assume that what they are reading is the contract. Some brochures, applications, and oral representation may not disclose all exclusions. An opportunity to review the actual contract and full disclosure of all coverages and exclusions in understandable terms would be a benefit to consumers.

A contract with no provision for cancellation is also a problem. I have seen some extended warranties with provisions for cancellation at will, or as a result of repossession or total loss. One warranty indicated that, if the lender financing the contract required that it be cancellable, the dealer must cancel upon presentation of an affidavit by the purchaser. Many contracts have no such provisions under any circumstances. A requirement that the contract be cancellable on a prorated basis and under specified circumstances would afford some additional protection. This may be of even greater importance in the future as unibody

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cars involved in serious accidents are frequently "totaled out" by insurance companies due to the difficulty in repairing them.

Dual coverage is another area of concern. Some warranty/contracts cover towing and reimbursement for alternate transportation or overnight expenses in the event of disablement of the vehicle away from home, beginning with the purchase date of the plan. The other coverages do not go into effect until the standard manufacturer warranty period ends. In general, a consumer is paying for something they can't use for at least one year and in some cases longer, depending on the length of the manufacturer's warranty. This may also be a legitimate basis for provisions that the contract be cancellable (possibly at a nominal administrative fee) during the period when the manufacturer's warranty preempts its use.

There is no doubt that some contracts are better than others, just as some of the insurance companies that administer the plans and dealers obligated to provide repairs are more reputable/solvent than others. The consumer wanting protection hasn't the choice of a plan in some cases. If the consumer could pick from 3 or 4 plans, competition for his business might result in a better overall product. This, however, might be impractical/unprofitable from the dealer's standpoint. I understand that dealers may offer the manufacturer's extended contract (if one is available) in addition to whatever other plan they sell.

A Los Angeles Times newspaper article dated April 12, 1980, regarding a Department of Insurance inquiry into the "fast growing field of automobile service contracts," projected a \$3-billion business in 1981, according to a member of the panel.

One concern at the time of these hearings was the frequency with which dealers were going out of business (bankruptcy). Dealers selling their own contracts who subsequently went out of business, left the consumer with a worthless document.

California law now requires dealers who sell their own contracts to carry insurance to cover the making of the contract.

In the 1970's, according to the article, some dealers began to make arrangements with private insurance companies. Typically the dealer, acting as agent for the company sells a contract promising certain services and repairs beyond the normal manufacturer warranty. Such an arrangement could be more profitable than selling the manufacturer's extended warranty as the price of the contract frequently includes a dealer markup over the company cost.

The concern about these arrangements was whether or not obligations would be met in the future. Testimony before the panel by one large carrier selling this type of contract indicated concern that growing numbers of small companies "are taking very, very big risks without proper reserves (to cover future losses) in light of galloping inflation." This still may be a concern.

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One Department of Insurance source said there were fears about inadequately financed entrepreneurs selling long-term contracts, knowing the "first year is free" because the car would still be under the manufacturer's warranty.

According to the New Car Book over 50 percent of new-car buyers in 1983 bought service contracts. Over 60% of those contracts were sold by Chrysler, Ford, and General Motors, leaving 40% sold by nonsuppliers (insurance companies or entrepreneurs). The book also stated that "dealers consider service contracts to be the second most important contribution to their profits (after financing).

I feel that in the future this industry will continue to grow, even more, due to the ever increasing computerized and technical nature of the automobile. People who, in the past, have felt confident in repairing and maintaining their vehicles will feel increasing pressure from within to purchase protection for future high cost repair bills. I assume that the cost of the contracts will increase proportionately.

Apparently, many of the problems experienced by consumers in the early stages of this industry have been resolved. Perhaps self policing and expanding competition within the industry have contributed to a better product for the consumer, by squeezing out the less reputable participants. Perhaps the 1980 Insurance Department inquiry also contributed to improvements.

Though our telephone calls reflect that many of our members continue to have problems discerning covered or excluded components, I'm not sure to what extent that can be corrected, given the technical nature of the automobiles' mechanical parts. Many consumers, even when given the opportunity to read the contract before agreeing to purchase it, don't take the time to do so. Generally the excitement of the new car purchase is just too overwhelming.

Though I have been unable to identify a substantial number of problems in this area from member inquiries, I will be happy to contact some outside agencies if you feel we should look further.

[REDACTED]

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February 25, 1985

Steve Lenzi
Senior Counsel
Governmental Relations

RE: Extended Warranty/Service Contracts

- * Member purchased Nissan 720 King Cab on June 29, 1984. Included in purchase was a service contract for 5 years/50,000 at the price of \$925.00. On July 24, 1984, less than 30 days from the date of purchase, the vehicle was totaled.

Member stated that the application he had signed for the service contract did not state that the contract was non-cancellable.

When he received a copy of the actual contract, it was stated in the contract itself.

He was not able to get a refund.

- * Member bought a new motorcycle and purchased service contract costing \$400.00. Contract was for 48 months, unlimited mileage.

Motorcycle was totaled 5 months after purchase. The application she signed did state that the contract was non-cancellable.

This member went to Small Claims Court. Judge said he could not award her a judgment, but did tell Whittier Honda that he felt that a refund was in order. They agreed with the judge in court (January 24, 1984), but member, after going down to pick it up and recontacting them several times, has still not received the refund.

- * We had several members with buyer's remorse after the purchase of a service contract.

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When they went back to the dealer to request cancellation they were told the contract was non-cancellable (application had not stated this).

One member told dealer, "You never told me that". Dealer said, "We hardly ever tell anyone".

One of our consultants went to a Ford dealer and a Chevy dealer to try to obtain copies of their manufacturer-backed service contract. The Chevy dealer said GM did not offer one; Ford said we could not have a copy and would only let us see it if we were really buying a car. Consultant did not say he was with the Auto Club.


Kathleen Downing
Assistant Manager
Member Legal Services

KD:bw
CC: Alice Bisno

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RECEIVED
JUN 20 1985
Ans'd.....

June 19, 1985

Regional Governmental Affairs Office
Ford Motor Company

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

Honorable Alan Robbins, Chairman
Senate Insurance, Claims and
Corporations Committee
State Capitol
Sacramento, California 95814

RE: Assembly Bill 2285
SUPPORT

Dear Senator Robbins:

Ford Motor Company supports passage of Assembly Bill 2285, as it was amended on May 21, 1985 and urges your Committee to approve it.

We originally had several problems with this measure, but met with the author's staff and worked out, by amendment, our major concern. We believe the author has been fair and responsive in addressing our problems and therefore support AB 2285.

In the case of Ford's Extended Service Plan contracts, we give the customer a brochure describing the general coverage and exclusions. And within 60 days, the customer is mailed a personalized contract setting forth all of the detailed information on the specific contract purchased. A sample is attached of both the application and the contract.

Thank you for your consideration of our position.

Sincerely,

RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Honorable Gwen Moore ✓
Gail Baker
Tom Dunipace

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Attachments

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JUN 19 1985

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RN 85 015443 PAGE NO. 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2285
AS AMENDED IN ASSEMBLY MAY 21, 1985

moore

Amendment 1

In line 1 of the title, strike out "Section 1794.4" and insert:

Sections 1791 and 1794.4

Amendment 2

On page 2, strike out line 1 and insert:

SECTION 1. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(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) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "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.

(e) "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.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal

*6/19 Amend 3
W. J. ...
St. ...*

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entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

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

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

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

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a

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blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are intended to assist the limited vision of the person so disabled.

(g) "Catalogue or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

SEC. 2. Section 1794.4 of the Civil Code is

Amendment 2

On page 2, line 9, strike out "SEC. 2." and insert:

SEC. 3.

Amendment 3

On page 2, line 36, after "contract" insert:

, and if no claims have been made against the contract. If a claim has been made against the contract within the first 60 days after receipt of the contract, paragraph (2) of this subdivision shall apply

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AMENDED IN SENATE JUNE 27, 1985
AMENDED IN ASSEMBLY MAY 21, 1985
AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to amend ~~Section 1794.4~~ Sections 1791 and 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified. This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions. *The term "service contract" would be revised so as not to apply to a policy of automobile insurance, as defined.*

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract contains specified disclosures and is available for inspection prior to the purchase, and unless either the contract or a brochure containing specified information regarding the contract is delivered to the buyer at or before the time of purchase ~~and the~~. *The bill would also require the contract itself to be delivered to the buyer within 60 days after the time of purchase and the contract to be cancelable by the purchaser under specified conditions and would provide for a refund to the purchaser.*

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4th District Court of Appeal Division 2

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

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

SECTION 1. Section 1791.4 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(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) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "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.

(e) "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.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal

entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

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

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

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

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or

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4th District Court of Appeal Division 2

1 intended to be used, to assist a physically disabled person
 2 in the mitigation or treatment of an injury or disease or
 3 to assist or affect or replace the structure or any function
 4 of the body of a physically disabled person, except that
 5 this term does not include prescriptive lenses and other
 6 ophthalmic goods unless they are sold or dispensed to a
 7 blind person, as defined in Section 19153 of the Welfare
 8 and Institutions Code and unless they are intended to
 9 assist the limited vision of the person so disabled.

10 (q) "Catalogue or similar sale" means a sale in which
 11 neither the seller nor any employee or agent of the seller
 12 nor any person related to the seller nor any person with
 13 a financial interest in the sale participates in the diagnosis
 14 of the buyer's condition or in the selection or fitting of the
 15 device.

16 *SEC. 2. Section 1794.4 of the Civil Code is amended*
 17 *to read:*

18 1794.4. Nothing in this chapter shall be construed to
 19 prevent the sale of a service contract to the buyer in
 20 addition to or in lieu of an express warranty if that
 21 contract fully and conspicuously discloses in simple and
 22 readily understood language the terms, conditions, and
 23 exclusions of that contract.

24 ~~SEC. 2.~~

25 *SEC. 3. Section 1794.41 is added to the Civil Code, to*
 26 *read:*

27 1794.41. No service contract covering any motor
 28 vehicle purchased for use in this state may be offered for
 29 sale or sold unless all of the following elements exist:

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

34 (b) The contract shall be available for inspection by
 35 the buyer prior to purchase and either the contract, or a
 36 brochure which specifically describes the terms,
 37 conditions, and exclusions of the contract, and the
 38 provisions of this section relating to contract delivery,
 39 cancellation, and refund, shall be delivered to the buyer
 40 at or before the time of purchase of the contract. Within

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1 60 days after the date of purchase, the contract itself shall
 2 be delivered to the buyer.

3 (c) The contract shall be cancelable by the purchaser
 4 under the following conditions:

5 (1) Unless the contract provides for a longer period,
 6 within the first 60 days after receipt of the contract, the
 7 full amount paid shall be refunded by the seller to the
 8 purchaser if the purchaser provides a written notice of
 9 cancellation to the person specified in the contract, *and*
 10 *if no claims have been made against the contract. If a*
 11 *claim has been made against the contract within the first*
 12 *60 days after receipt of the contract, a pro-rata refund,*
 13 *based on either elapsed time or mileage, at the seller's*
 14 *option as indicated in the contract, shall be made by the*
 15 *seller to the purchaser if the purchaser provides a written*
 16 *notice of cancellation to the person specified in the*
 17 *contract.*

18 (2) Unless the contract provides for a longer period for
 19 obtaining a full refund, after the first 60 days after receipt
 20 of the contract, a pro-rata refund, based on either elapsed
 21 time or mileage, at the seller's option as indicated in the
 22 contract, shall be made by the seller to the purchaser if
 23 the purchaser provides a written notice of cancellation to
 24 the person specified in the contract. In addition, the
 25 seller may assess a cancellation or administrative fee, not
 26 to exceed twenty-five dollars (\$25).

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

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

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SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 2285 (Moore) As Amended June 27, 1985
Civil Code

Source: Southern California Automobile Association
Prior Legislation: No known
Support: Ford Motor Company
Attorney General of the State of California
California State Automobile Association
S.A.F.E. Federal Credit Union
Consumer Advisor Council to the Department of Consumer Affairs
Opposition: The Independent Automobile Dealers Association of California

SUBJECT

Motor vehicle extended service warranties and service contracts: disclosure and refunds.

DIGEST

1] **Description:** This bill as amended would authorize the sale of automobile service contracts provided that the contract fully and conspicuously discloses the exclusions from coverage under the contract. (Section 1794.4 of the Civil Code).

AB 2285 states that an automobile service contract is not a policy of automobile insurance as defined in Section 116 of the Insurance Code (Civil Code Section 1791 (0)).

This bill would prohibit the sale of an automobile service contract unless the contract contains all disclosures, the contract or a brochure detailing the contract provisions be available to the buyer prior to the sale, that it be cancellable by the purchaser for the full amount within 60 days after receipt of the contract upon written notice of cancellation by the purchaser or in case of a claim within the first 60 days after delivery, a pro-rated refund upon written notice based on either elapsed time or mileage at the seller's option, minus a cancellation fee of up to \$25 in either case. The bill also specifies that the contract must be delivered within 60 days of sale. (Section 1794.41 of the Civil Code).

2] **Background:** Extended automobile service contracts are offered for sale in the state of California, principally through automobile dealers and are regulated under Section 1791 through Section 1794 of the Civil Code.

Section 116 of the Insurance Code specifies that automobile service contracts are not insurance but that these warranties must be backed by a policy of insurance.

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Automobile service contracts are technical in nature providing specific coverages for elements of an automobile with either whole or partial exclusions for other portions of the vehicle. In some cases, automobile service contracts are duplicative or enhancements to original vehicle warranties provided by the manufacturer.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

Penalties for violation of this measure are not specified in the bill nor is the enforcement agency and its responsibility for enforcing the bill detailed.

The author indicates that numerous consumers have contacted the sponsor to indicate they have never received service contracts they purchased and have been unable to cancel the contract in the event of the total loss of the vehicle. The Attorney General echoes these concerns and states that purchasers of these contracts often find they can not tell what is covered under such contracts.

The Independent Automobile Dealers Association of California in opposing this measure states that unlike the new cars they believe this bill means to cover, used cars seldom have warranty provisions at all and thus should be excluded from the bill. They further state that since automobile service contracts are often financed by lenders who determine the interest to be charged on the vehicle and service contracts financed in aggregate, a total refund in the case of cancellation would be unfair to the lender when he bases his profit on the total price of the sales contract. The opponents have offered amendments to erase their concerns which to date the sponsor has resisted.

SHELDON DAVIDOW
Consultant

08/21/85

ASSEMBLY BILL NO. 2285

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MJN/493



CONSUMER ADVISORY COUNCIL
 1021 "O" STREET, SACRAMENTO, CALIFORNIA 95814
 PHONE: (916) 322-0548



July 1, 1985

The Honorable Gwen Moore
 Assemblymember
 State Capitol
 Sacramento, CA 95814

Dear Assemblymember Moore:

AB 2285 - WARRANTIES *File*

At its regular meeting on May 10, 1985, the Consumer Advisory Council voted to SUPPORT AB 2285 - Warranties: motor vehicles: extended warranties and service contracts. The Council is composed of seven members appointed by the Governor, representing consumers, business, labor, and agricultural interests. In addition, one member from the State Senate and Assembly serve as ex-officio members. The Council has been given a legislative mandate to make recommendations to the Governor and the Legislature on consumer issues and concerns.

The Department has received numerous complaints from new and used car buyers who have purchased an auto warranty and then discovered that they were misled as to warranty terms; most consumers cannot understand exactly what is covered by warranty. In addition, many have been unable to cancel warranty contracts or secure a refund when necessary. The Council believes that AB 2285 will correct many of these abuses.

This bill specifically addresses such contracts, requiring that it be available for inspection prior to purchase; disclose all exclusions, terms, and conditions; and be delivered to the buyer at or before the time of purchase. An express right of cancellation is also included.

On behalf of California consumers, the Council urges your AYE vote on AB 2285.

Thank you for your consideration of this issue. If the Council can ever be of assistance to you, please do not hesitate to call.

Sincerely,

Kathie J. Klass

KATHIE J. KLASS
 Executive Officer

cc: Consumer Advisory Council Members
 Senate Committee on Insurance Claims and Corporations

SRM:pmm

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**Independent Automobile Dealers
Association of California**
1225 EIGHTH STREET, SUITE 200
SACRAMENTO, CALIF. 95814
TELEPHONE (916) 441-6663

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Stockton, CA 95205
(209) 465-2256

Pat Matlach - Chairman
Desert Motors
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Victorville, CA 92392
(818) 245-6821

Ray Cronin - Vice President
Cronin Motor Company
25718 Mission Boulevard
Hayward, CA 94544
(415) 582-3700

Jerry Cowgill - Vice President
Bug J's Used Cars
2440 Thompson Boulevard
Ventura, CA 93003
(805) 652-2021

Gary Dorrel - Vice President
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121 W. Plaza Boulevard
National City, CA 92050
(619) 477-2191

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AdvoCal
Legislative Advocates
1225 Eighth St., Suite 200
Sacramento, CA 95814
(916) 446-6161

August 20, 1985

Honorable Alan Robbins
Senator
State Capitol
Sacramento, California 95814

Dear Senator Robbins:

Before your committee on Wednesday, August 21, will be Assembly Member Gwen Moore's AB 2285.

This legislation allows for refunds on extended service warranties for automobiles. While we understand the sponsors intent as it relates to new cars covered by manufacturers warranties, this bill places an unnecessary burden on the used car industry whose cars are not covered by manufacturers warranties. Many of our sales are based on the purchase of an extended service warranty with the reduction in the price of the car to cover the cost of the warranty. The used car dealer who would have to refund the price of the warranty would loose twice because he already lowered the price of the car to consumate the transaction to include the warranty.

As the bill is currently written, the Independent Automobile Dealers Association of California is opposed. We have attached for your review some proposed amendments that would remove our opposition.

We would urge your favorable consideration for these amendments.

Sincerely yours,

Bill Dohring
Bill Dohring
Director of Government Relations

BD/dj
Attachment

cc: Assembly Member Moore
Senator Wadie Deddeh
Senator Ed Davis
Senator John Doolittle
Senator Barry Keene

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Amendment to AB 2285
(Proposed)

Add to Section 3:

This section shall not apply to a service contract for a used motor vehicle which is not covered by a warranty from the manufacturer.

Amend

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1 (888) 676-1947**

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MJN/497

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AMENDED IN SENATE AUGUST 27, 1985
AMENDED IN SENATE JUNE 27, 1985
AMENDED IN ASSEMBLY MAY 21, 1985
AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to amend Sections 1791 and 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions. The term "service contract" would be revised so as not to apply to a policy of automobile insurance, as defined.

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract contains specified disclosures and is available for inspection prior to the purchase, and unless either the contract or a brochure containing specified information regarding the contract is delivered to the buyer at or before the time of purchase. The bill would also require the contract itself to be delivered to the buyer within 60 days after the time of purchase and the contract to be cancelable by the purchaser under specified conditions and would provide for a refund to the purchaser.

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MJN/498

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 1791 of the Civil Code is
2 amended to read:

3 1791. As used in this chapter:

4 (a) "Consumer goods" means any new product or part
5 thereof that is used, bought, or leased for use primarily for
6 personal, family, or household purposes, except for
7 clothing and consumables. "Consumer goods" shall
8 include new and used assistive devices sold at retail.

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

16 (c) "Clothing" means any wearing apparel, worn for
17 any purpose, including under and outer garments, shoes,
18 and accessories composed primarily of woven material,
19 natural or synthetic yarn, fiber, or leather or similar
20 fabric.

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

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

32 (f) "Independent repair or service facility" or
33 "independent service dealer" means any individual,
34 partnership, corporation, association, or other legal
35 entity, not an employee or subsidiary of a manufacturer

1 or distributor, which engages in the business of servicing
2 and repairing consumer goods.

3 (g) "Lease" means any contract for the lease or
4 bailment for the use of consumer goods by an individual,
5 for a term exceeding four months, primarily for personal,
6 family, or household purposes, whether or not it is agreed
7 that the lessee bears the risk of the consumer goods'
8 depreciation.

9 (h) "Lessee" means an individual who leases
10 consumer goods under a lease.

11 (i) "Lessor" means a person who regularly leases
12 consumer goods under a lease.

13 (j) "Manufacturer" means any individual,
14 partnership, corporation, association, or other legal
15 relationship which manufactures, assembles, or produces
16 consumer goods.

17 (k) "Place of business" means, for the purposes of any
18 retail seller that sells consumer goods by catalog or mail
19 order, the distribution point for such goods.

20 (l) "Retail seller," "seller," or "retailer" means any
21 individual, partnership, corporation, association, or other
22 legal relationship which engages in the business of selling
23 or leasing consumer goods to retail buyers.

24 (m) "Return to the retail seller" means, for the
25 purposes of any retail seller that sells consumer goods by
26 catalog or mail order, the retail seller's place of business,
27 as defined in subdivision (k).

28 (n) "Sale" means (1) the passing of title from the
29 seller to the buyer for a price, or (2) a consignment for
30 sale.

31 (o) "Service contract" means a contract in writing to
32 perform, over a fixed period of time or for a specified
33 duration, services relating to the maintenance or repair
34 of a consumer product, except that this term does not
35 include a policy of automobile insurance, as defined in
36 Section 116 of the Insurance Code.

37 (p) "Assistive device" means any instrument,
38 apparatus, or contrivance, including any component or
39 part thereof or accessory thereto, which is used or
40 intended to be used, to assist a physically disabled person

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1 in the mitigation or treatment of an injury or disease or
2 to assist or affect or replace the structure or any function
3 of the body of a physically disabled person, except that
4 this term does not include prescriptive lenses and other
5 ophthalmic goods unless they are sold or dispensed to a
6 blind person, as defined in Section 19153 of the Welfare
7 and Institutions Code and unless they are intended to
8 assist the limited vision of the person so disabled.

9 (q) "Catalogue or similar sale" means a sale in which
10 neither the seller nor any employee or agent of the seller
11 nor any person related to the seller nor any person with
12 a financial interest in the sale participates in the diagnosis
13 of the buyer's condition or in the selection or fitting of the
14 device.

15 SEC. 2. Section 1794.4 of the Civil Code is amended
16 to read:

17 1794.4. Nothing in this chapter shall be construed to
18 prevent the sale of a service contract to the buyer in
19 addition to or in lieu of an express warranty if that
20 contract fully and conspicuously discloses in simple and
21 readily understood language the terms, conditions, and
22 exclusions of that contract.

23 SEC. 3. Section 1794.41 is added to the Civil Code, to
24 read:

25 1794.41. No service contract covering any motor
26 vehicle purchased for use in this state may be offered for
27 sale or sold unless all of the following elements exist:

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

32 (b) The contract shall be available for inspection by
33 the buyer prior to purchase and either the contract, or a
34 brochure which specifically describes the terms,
35 conditions, and exclusions of the contract, and the
36 provisions of this section relating to contract delivery,
37 cancellation, and refund, shall be delivered to the buyer
38 at or before the time of purchase of the contract. Within
39 60 days after the date of purchase, the contract itself shall
40 be delivered to the buyer.

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1 (c) The contract shall be cancelable by the purchaser
2 under the following conditions:

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

23 (2) Unless the contract provides for a longer period for
24 obtaining a full refund, after the first 60 days after receipt
25 of the contract by the purchaser of a new motor vehicle
26 with manufacturer warranties, or within the first 30 days
27 after receipt of the contract by the purchaser of a used
28 motor vehicle without manufacturer warranties, a
29 pro-rata refund, based on either elapsed time or mileage,
30 at the seller's option as indicated in the contract, shall be
31 made by the seller to the purchaser if the purchaser
32 provides a written notice of cancellation to the person
33 specified in the contract. In addition, the seller may assess
34 a cancellation or administrative fee, not to exceed
35 twenty-five dollars (\$25).

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

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4th District Court of Appeal Division 2

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THIRD READING

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614</p>	Bill No.	AB 2285
	Author:	Moore (D)
	Amended:	8/28/85 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.: AB 2285		
DATE OF HEARING: 8-21-85		
SENATORS:	AYE	NO
Davis	✓	
Doolittle	✓	
Keene	✓	
Deddeh (VC)	✓	
Robbins (Ch)	✓	
TOTAL:	4	0

Moore
36-0
9-4-85

Assembly Floor Vote: 75-1; p. 2334; 6/6/85

SUBJECT: Warranties: motor vehicles

SOURCE: Automobile Club of Southern California

DIGEST: This bill:

1. Specifically requires a service contract sold in addition to, or in lieu of, express warranties to disclose its exclusions as well as its terms and conditions.
2. Prohibits the offering or sale of service contracts covering motor vehicles purchased for use in California unless:
 - A. The contract by the purchaser of a new motor vehicle with manufacturer warranties, or within the first 30 days after receipt of the contract by the purchaser of a used motor vehicle without manufacturer warranties is cancellable by the buyer and provides for full and pro rata refunds by the seller under specified conditions.
 - B. The contract is available for inspection by the buyer prior to purchase; the contract or a brochure containing specified disclosures is delivered to the buyer before or at the time of purchase; and the contract itself is delivered to the buyer within 60 days of purchase.
 - C. The contract discloses its terms, conditions, exclusions and the buyer's cancellation and refund rights under the bill, as specified.

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CONTINUED

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

ANALYSIS: Existing law regulates consumer warranties and provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to, or in lieu of, an express warranty as long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 8/27/85)

Automobile Club of Southern California (sponsor)
Attorney General
California State Automobile Association
S.A.F.E. Federal Credit Union
Ford Motor Company
Consumer Advisory Council, Department of Consumer Affairs

ARGUMENTS IN SUPPORT: Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand what the contract covers and excludes, and that the contracts are not what they were represented to be.

ASSEMBLY FLOOR VOTE:

Assembly Bill No. 2285 (Moore)—An act to amend Section 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

Bill read third time, and passed by the following vote:

AYES—75

Agnos	Duffy	Jones	Papan
Alatorre	Eaves	Katz	Peace
Allen	Farr	Kelley	Robinson
Aretas	Felando	Killea	Rogers
Bader	Ferguson	Klebs	Ross
Baker	Filante	Konnyu	Sestrand
Bane	Floyd	La Follette	Sher
Bates	Frazee	Lancaster	Statham
Bradley	Frizzelle	Leonard	Stirling
Bronzan	Grisham	Margolin	Tanner
Brown, Dennis	Hannigan	McAlister	Tucker
Campbell	Harris	McClintock	Vasconcellos
Chacon	Hauser	Mojonier	Vicancia
Cluife	Hayden	Molina	Waters, Maxine
Condit	Herger	Moore	Waters, Norman
Connelly	Hill	Mountjoy	Wright
Cortese	Hughes	Naylor	Wyman
Costa	Ishberg	Nolan	Mr. Speaker
Davis	Johnston	O'Connell	

NOES—1

~~Substantive~~

Bill ordered transmitted to the Senate.

DLW:ctl 8/28/85 Senate Floor Analyses

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

AMENDED IN SENATE SEPTEMBER 3, 1985

AMENDED IN SENATE AUGUST 27, 1985

AMENDED IN SENATE JUNE 27, 1985

AMENDED IN ASSEMBLY MAY 21, 1985

AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member Moore

March 8, 1985

An act to amend Sections 1791 and 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Moore. Warranties: motor vehicles extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions. The term "service contract" would be revised so as not to apply to a policy of automobile insurance, as defined.

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract contains specified disclosures and is available for inspection prior to the purchase, and unless either the contract or a brochure containing specified information regarding the contract is delivered to the buyer at or before the time of purchase. The bill would also require the contract itself to be delivered to the buyer within 60 days after the time of purchase and the contract to be cancelable

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by the purchaser under specified conditions and would provide for a refund to the purchaser.

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 1791 of the Civil Code is
2 amended to read:

3 1791. As used in this chapter:

4 (a) "Consumer goods" means any new product or part
5 thereof that is used, bought, or leased for use primarily for
6 personal, family, or household purposes, except for
7 clothing and consumables. "Consumer goods" shall
8 include new and used assistive devices sold at retail.

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

16 (c) "Clothing" means any wearing apparel, worn for
17 any purpose, including under and outer garments, shoes,
18 and accessories composed primarily of woven material,
19 natural or synthetic yarn, fiber, or leather or similar
20 fabric.

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

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

32 (f) "Independent repair or service facility" or
33 "independent service dealer" means any individual,

1 partnership, corporation, association, or other legal
2 entity, not an employee or subsidiary of a manufacturer
3 or distributor, which engages in the business of servicing
4 and repairing consumer goods.

5 (g) "Lease" means any contract for the lease or
6 bailment for the use of consumer goods by an individual,
7 for a term exceeding four months, primarily for personal,
8 family, or household purposes, whether or not it is agreed
9 that the lessee bears the risk of the consumer goods'
10 depreciation.

11 (h) "Lessee" means an individual who leases
12 consumer goods under a lease.

13 (i) "Lessor" means a person who regularly leases
14 consumer goods under a lease.

15 (j) "Manufacturer" means any individual,
16 partnership, corporation, association, or other legal
17 relationship which manufactures, assembles, or produces
18 consumer goods.

19 (k) "Place of business" means, for the purposes of any
20 retail seller that sells consumer goods by catalog or mail
21 order, the distribution point for such goods.

22 (l) "Retail seller," "seller," or "retailer" means any
23 individual, partnership, corporation, association, or other
24 legal relationship which engages in the business of selling
25 or leasing consumer goods to retail buyers.

26 (m) "Return to the retail seller" means, for the
27 purposes of any retail seller that sells consumer goods by
28 catalog or mail order, the retail seller's place of business,
29 as defined in subdivision (k).

30 (n) "Sale" means (1) the passing of title from the
31 seller to the buyer for a price, or (2) a consignment for
32 sale.

33 (o) "Service contract" means a contract in writing to
34 perform, over a fixed period of time or for a specified
35 duration, services relating to the maintenance or repair
36 of a consumer product, except that this term does not
37 include a policy of automobile insurance, as defined in
38 Section 116 of the Insurance Code.

39 (p) "Assistive device" means any instrument,
40 apparatus, or contrivance, including any component or

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1 part thereof or accessory thereto, which is used or
 2 intended to be used, to assist a physically disabled person
 3 in the mitigation or treatment of an injury or disease or
 4 to assist or affect or replace the structure or any function
 5 of the body of a physically disabled person, except that
 6 this term does not include prescriptive lenses and other
 7 ophthalmic goods unless they are sold or dispensed to a
 8 blind person, as defined in Section 19153 of the Welfare
 9 and Institutions Code and unless they are intended to
 10 assist the limited vision of the person so disabled.

11 (q) "Catalogue or similar sale" means a sale in which
 12 neither the seller nor any employee or agent of the seller
 13 nor any person related to the seller nor any person with
 14 a financial interest in the sale participates in the diagnosis
 15 of the buyer's condition or in the selection or fitting of the
 16 device.

17 SEC. 2. Section 1794.4 of the Civil Code is amended
 18 to read:

19 1794.4. Nothing in this chapter shall be construed to
 20 prevent the sale of a service contract to the buyer in
 21 addition to or in lieu of an express warranty if that
 22 contract fully and conspicuously discloses in simple and
 23 readily understood language the terms, conditions, and
 24 exclusions of that contract.

25 SEC. 3. Section 1794.41 is added to the Civil Code, to
 26 read:

27 1794.41. No service contract covering any motor
 28 vehicle purchased for use in this state may be offered for
 29 sale or sold unless all of the following elements exist:

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

34 (b) The contract shall be available for inspection by
 35 the buyer prior to purchase and either the contract, or a
 36 brochure which specifically describes the terms,
 37 conditions, and exclusions of the contract, and the
 38 provisions of this section relating to contract delivery,
 39 cancellation, and refund, shall be delivered to the buyer
 40 at or before the time of purchase of the contract. Within

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1 60 days after the date of purchase, the contract itself shall
 2 be delivered to the buyer.

3 (c) The contract shall be cancelable by the purchaser
 4 under the following conditions:

5 (1) Unless the contract provides for a longer period,
 6 within the first 60 days after receipt of the contract by the
 7 purchaser of a new motor vehicle with manufacturer
 8 warranties, or within the first 30 days after receipt of the
 9 contract by the purchaser of with respect to a used motor
 10 vehicle without manufacturer warranties, the full
 11 amount paid shall be refunded by the seller to the
 12 purchaser if the purchaser provides a written notice of
 13 cancellation to the person specified in the contract, and
 14 if no claims have been made against the contract. If a
 15 claim has been made against the contract within the first
 16 60 days after receipt of the contract by the purchaser of
 17 a new motor vehicle with manufacturer warranties, or
 18 within the first 30 days after receipt of the contract by the
 19 purchaser of with respect to a used motor vehicle without
 20 manufacturer warranties, a pro-rata refund, based on
 21 either elapsed time or mileage, at the seller's option as
 22 indicated in the contract, shall be made by the seller to
 23 the purchaser if the purchaser provides a written notice
 24 of cancellation to the person specified in the contract.

25 (2) Unless the contract provides for a longer period for
 26 obtaining a full refund, after the first 60 days after receipt
 27 of the contract by the purchaser of a new motor vehicle
 28 with manufacturer warranties, or within, or after the
 29 first 30 days after receipt of the contract by the purchaser
 30 of with respect to a used motor vehicle without
 31 manufacturer warranties, a pro-rata refund, based on
 32 either elapsed time or mileage, at the seller's option as
 33 indicated in the contract, shall be made by the seller to
 34 the purchaser if the purchaser provides a written notice
 35 of cancellation to the person specified in the contract. In
 36 addition, the seller may assess a cancellation or
 37 administrative fee, not to exceed twenty-five dollars
 38 (\$25).

39 (3) If the contract was financed with a vehicle
 40 purchase, the seller may make the refund payable to the

4th District Court of Appeal Division 2.

AB 2285

— 6 —

1 purchaser, the lender of record, or both.

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4th District Court of Appeal Division 2.

MJN/507

STATEMENT FOR PURPOSES OF AMENDING AB 2285
FOR ASSEMBLYWOMAN GWEN MOORE
SENATE FLOOR

MR. PRESIDENT AND MEMBERS:

I WOULD LIKE UNANIMOUS CONSENT TO ADD AMENDMENTS TO SB 2285. THESE AMENDMENTS WERE DEVELOPED WITH THE ASSISTANCE OF THE CONSULTANT OF THE SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE WHO INDICATED THAT COUNSEL DID NOT DRAFT THE PREVIOUS AMENDMENTS AS REQUESTED. THESE AMENDMENTS CLARIFY THAT PURCHASERS OF USED CARS NOT UNDER WARRANTY HAVE A LESSER PERIOD OF TIME TO CANCEL AN EXTENDED WARRANTY ON THEIR VEHICLES THAN PURCHASERS OF OTHER MOTOR VEHICLES. THESE AMENDMENTS ALSO REMOVE ANY OPPOSITION TO THE BILL.

I ASK YOU YOUR "AYE" VOTE.

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MJN/508

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

AB 2285 SENATE FLOOR

ITEM 147 on 9/3/85 file

AUTHOR'S AMENDMENTS

THIS BILL ALLOWS MOTOR VEHICLE SERVICE CONTRACTS TO BE CANCELLABLE BY THE BUYER AND PROVIDES FOR A FULL OR PRO-RATA REFUND DEPENDING ON THE LENGTH OF TIME THE BUYER HAS HAD THE CONTRACT. THERE IS NO OPPOSITION TO THE BILL.

THESE AMENDMENTS MERELY CORRECT AMENDMENTS IN THE LATEST VERSION OF THE BILL -- WHICH WERE OFFERED BY THE AUTHOR IN THE SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE. THEY CLARIFY THAT PURCHASERS OF USED CARS THAT ARE NOT UNDER WARRANTY HAVE A LESSER PERIOD OF TIME THAN PURCHASERS OF OTHER MOTOR VEHICLES TO CANCEL AN EXTENDED WARRANTY ON THEIR VEHICLES.

(THESE AMENDMENTS WERE DEVELOPED WITH THE ASSISTANCE OF THE COMMITTEE CONSULTANT WHO INDICATES THAT COUNSEL DID NOT DRAFT PREVIOUS AMENDMENTS AS REQUESTED.)

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MJN/509

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

AB 2285 MOTOR VEHICLE EXTENDED WARRANTIES

THIS BILL REQUIRES AUTOMOBILE SERVICE CONTRACTS TO DISCLOSE TO CONSUMERS THE CONTRACT'S EXCLUSIONS, AS WELL AS TERMS AND CONDITIONS AT TIME OF PURCHASE.

IT ALSO REQUIRES THAT THE CONTRACT OR A DESCRIPTIVE BROCHURE BE GIVEN TO THE PURCHASER AT THE TIME OF PURCHASE.

IN ADDITION, IT REQUIRES MOTOR VEHICLE SERVICE CONTRACTS TO BE CANCELLABLE BY THE BUYER AND PROVIDES FOR A FULL OR PRO-RATA REFUND DEPENDING ON THE LENGTH OF TIME THE BUYER HAS HAD THE CONTRACT.

CURRENTLY, A NUMBER OF CONSUMERS HAVE COMPLAINED ABOUT A LACK OF INFORMATION AT THE TIME OF PURCHASE OF A CONTRACT OR THE INABILITY TO CANCEL THE CONTRACT IN THE EVENT THE MOTORIST IS INVOLVED IN A TOTAL LOSS OF THE VEHICLE. THIS BILL WILL RESOLVE THESE PROBLEMS.

THE BILL IS SPONSORED BY THE SOUTHERN CALIFORNIA AUTOMOBILE ASSOCIATION AND SUPPORTED BY THE ATTORNEY GENERAL, THE FORD MOTOR COMPANY, THE STATE CONSUMER ADVISORY COUNCIL, S.A.F.E., FEDERAL CREDIT UNION, THE DEPARTMENT OF CONSUMER AFFAIRS, AND THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION. THERE IS NO OPPOSITION TO THE BILL AND I ASK FOR YOUR "AYE" VOTE.

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8-27-85

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MJN/510

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

STATEMENT - ASSEMBLY BILL 2285

Assembly Bill 2285 dealing with motor vehicle extended warranty contracts was introduced at the request of the Automobile Club of Southern California.

This bill will simply require service contracts to disclose exclusions, as well as the contract's terms and conditions, at the time of purchase.

In addition, this bill will require motor vehicle service contracts to be cancelable by the buyer and provides for either a full refund or a pro-rata refund depending upon the length of time the buyer has been in receipt of the contract.

The Auto Club has become aware of several problems related to the extended service warranty contracts which relate to either a lack of information at the time of purchase of the contract or an inability of the purchaser to cancel the contract in the event the vehicle is involved in a total loss shortly after purchase.

The bill is supported by the Ford Motor Company, the Attorney General of the State of California, the California State Automobile Association, S.A.F.E. Federal Credit Union, and the Consumer Advisory Council to the Department of Consumer Affairs. Amendments in the Senate Insurance, Claims and Corporations Committee removed any opposition to the bill.

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

STATEMENT - ASSEMBLY BILL 2285

Assembly Bill 2285 dealing with motor vehicle extended warranty contracts was introduced at the request of the Automobile Club of Southern California.

This bill will simply require service contracts to disclose exclusions, as well as the contract's terms and conditions, at the time of purchase.

In addition, this bill will require motor vehicle service contracts to be cancelable by the buyer and provides for either a full refund or a pro-rata refund depending upon the length of time the buyer has been in receipt of the contract.

The Auto Club has become aware of several problems related to the extended service warranty contracts which relate to either a lack of information at the time of purchase of the contract or an inability of the purchaser to cancel the contract in the event the vehicle is involved in a total loss shortly after purchase.

The bill is supported by the Ford Motor Company, the Attorney General of the State of California, the California State Automobile Association, S.A.F.E. Federal Credit Union, and the Consumer Advisory Council to the Department of Consumer Affairs. Amendments in the Senate Insurance, Claims and Corporations Committee removed any opposition to the bill.

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

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MJN/513

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ANALYSIS: Existing law regulates consumer warranties and provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to, or in lieu of, an express warranty as long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 8/27/85)

Automobile Club of Southern California (sponsor)
Attorney General
California State Automobile Association
S.A.F.E. Federal Credit Union
Ford Motor Company
Consumer Advisory Council, Department of Consumer Affairs

ARGUMENTS IN SUPPORT: Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand what the contract covers and excludes, and that the contracts are not what they were represented to be.

ASSEMBLY FLOOR VOTE:

Assembly Bill No. 2285 (Moore)—An act to amend Section 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

Bill read third time, and passed by the following vote:

AYES—48

Agnes	Duffy	Jones	Pagan
Alatorre	Earves	Katz	Peace
Allen	Farr	Kelley	Robinson
Artes	Felando	Kilias	Rogers
Bader	Ferguson	Klebe	Ross
Baker	Fitzner	Konnyu	Sandwood
Bane	Floyd	La Follette	Sher
Bates	Frazier	Lancaster	Statham
Bradley	Fritzelle	Leonard	Stirling
Bronson	Grisham	Margolin	Tanner
Brown, Dennis	Harrigan	McAlister	Tucker
Campbell	Harris	McClintock	Vannocelles
Carson	Hauser	McJannet	Vivencia
Chute	Hayden	Molina	Waters, Maxine
Condit	Herger	Moore	Waters, Norman
Connelly	Hill	Mountjoy	Wright
Cortese	Hughes	Naylor	Wyman
Costa	Izenberg	Noles	Mr. Speaker
Davis	Johnston	O'Connell	

NOES—1

Substituted

Bill ordered transmitted to the Senate.

DLW:ctl 9/3/85 Senate Floor Analyses

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CONCURRENCE IN SENATE AMENDMENTS

AB 2285 (Moore) - As Amended: September 3, 1985

ASSEMBLY VOTE 75-1 (June 6, 1985) SENATE VOTE 36-0 (September 4, 1985)

Original Committee Reference: CON. PRO.

DIGEST

Existing law regulates consumer warranties and provides that the consumer warranty provisions do not prevent the sale of service contracts in addition to, or in lieu of, an express warranty as long as the service contract fully and conspicuously discloses its terms and conditions in simple and readily understood language.

As passed by the Assembly, this bill:

- 1) Specifically required a service contract sold in addition to, or in lieu of, express warranties to disclose its exclusions as well as its terms and conditions.
- 2) Prohibited the offering or sale of service contracts covering all motor vehicles purchased for use in California unless:
 - a) The contract is cancellable.
 - b) The Contract provides, upon written notice of cancellation by the purchaser, for both:
 - 1) A full refund by the seller within 60 days after the purchaser's receipt of the contract, unless the contract provides a longer period.
 - 2) A pro rata refund, as specified, by the seller after the full refund period has elapsed; with allowance for a deduction of an administrative fee not to exceed \$25.
 - c) The contract is available for inspection by the buyer prior to purchase; the contract or a brochure containing specified disclosures is delivered to the buyer before or at the time of purchase; and the contract itself is delivered to the buyer within 60 days of purchase.
 - d) The contract discloses its terms, conditions, exclusions and the buyer's cancellation and refund rights under the bill, as specified.

- continued -

AB 2285

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The Senate amendments:

- 1) Exclude from the definition of "service contract," service contracts which are automobile insurance policies as defined in Insurance Code Section 116.
- 2) Limit the minimum full refund period to 30 days for a purchaser of a used motor vehicle that is not covered by a manufacturer's warranty, unless the service contract provides for a longer time period.
- 3) Provide for a pro rata instead of a full refund, if a service contract claim has been made within the applicable full refund period.
- 4) Provide a pro rata refund, as specified, to purchasers of a service contract covering a used motor vehicle without a manufacturer's warranty, after the minimum full refund period has elapsed, with allowance for a deduction at an administrative fee not to exceed \$25.

COMMENTS

This bill is sponsored by the Automobile Club of Southern California and is supported by the Attorney General. Proponents indicate that purchasers of service contracts frequently complain that they never see or receive the actual contract, that they cannot understand what the contract covers and what it excludes, and that the contracts are not what they were represented to be. The technical nature of an automobile's mechanical parts and operation, and the subjectivity involved in interpreting contract provisions make such contracts difficult to understand.

Jay J. DeFuria
324-2721
9/9/85:aconpro

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ENROLLED BILL REPORT

Analyst: Gale Baker *me*
 Bus. Ph: 322-4292
 Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 2285
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: MOORE

- SUPPORT**
- 1 Description
- BACKGROUND**
- 2 History
 - 3 Purpose
 - 4 Sponsor
 - 5 Current Practice
 - 6 Implementation
 - 7 Justification
 - 8 Alternatives
 - 9 Responsibility
 - 10 Other Agencies
 - 11 Future Impact
 - 12 Termination
- FISCAL IMPACT ON STATE BUDGET**
- 13 Budget
 - 14 Future Budget
 - 15 Other Agencies
 - 16 Federal
 - 17 Tax Impact
 - 18 Governor's Budget
 - 19 Continuous Appropriation
 - 20 Assumptions
 - 21 Deficiency Measure
 - 22 Deficiency Resolution
 - 23 Absorption of Costs
 - 24 Personnel Changes
 - 25 Organizational Changes
 - 26 Funds Transfer
 - 27 Tax Revenue
 - 28 Other Fiscal
- SOCIO-ECONOMIC IMPACT**
- 29 Rights Effect
 - 30 Monetary
 - 31 Consumer Choice
 - 32 Competition
 - 33 Employment
 - 34 Economic Development
- INTERESTED PARTIES**
- 35 Proponents
 - 36 Opponents
 - 37 Pro/Con Arguments
- RECOMMENDATION JUSTIFICATION**
- 38 Support
 - 39 Oppose
 - 40 Neutral
 - 41 No Position
 - 42 If Amended

BILL SUMMARY

Existing law regulates implied and express warranties on consumer goods, including motor vehicles, sold in California. Existing law does not specifically regulate service contracts on consumer goods, other than to require that all of the terms and conditions be disclosed in the contract.)

(This bill would require motor vehicle service contracts to contain specified disclosures; to be cancelable by the buyer; to be available for inspection prior to purchase, and to be delivered to the buyer within 60 days after purchase.)

Background

The Automobile Club of Southern California, the sponsor of this bill, states that service contract purchasers often complain that they never see or receive the actual contract, that they cannot understand exactly what the contract covers and excludes, and that the contracts are not what they were represented to be.

Some problems have also arisen because some dealers or manufacturers do not allow cancellations. In one case cited by the Automobile Club, a consumer purchased a new Datsun King Cab with an extended service contract. He was involved in an accident in which the truck was totaled 10 days after purchase. When he attempted to cancel the extended service contract, he was told that it was non-cancelable and he was responsible for continued payments under the contract.

The sponsor has tailored the cancellation provisions in this bill after the current policies of Ford, GM, and Chrysler. The sponsor has also worked with the Motor Car Dealers Association and the Independent Automobile Dealers Association to achieve a mutually satisfactory solution to the problem.

VOTE:	Assembly	Partisan	Senate	Partisan
	19-C	None		R D
	Floor:	75-1	Floor:	36-0
	Policy Committee:	6-0	Policy Committee:	4-0
	Fiscal Committee:		Fiscal Committee:	

RECOMMENDATION TO GOVERNOR: SIGN VETO NO POSITION DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: *Marie [Signature]* DATE: 9-20-85 AGENCY SECRETARY: *[Signature]* DATE: 9/23/85

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Specific Findings

This bill would impose the following requirements upon the sale of motor vehicle service contracts:

(1) Existing law requires service contracts to contain all of the terms and conditions of the contract. This bill in addition requires any exclusions to be disclosed.

(2) Service contracts must be available for inspection by the buyer prior to purchase, and either the contract or a brochure describing the terms, conditions and exclusions (and the contract delivery and cancellation rights described below) must be given to the buyer at or before the time of purchase.

(3) If a brochure is provided at the time of purchase in lieu of a contract, the actual contract must be delivered to the buyer within 60 days after purchase.

(4) Unless the contract provides for a longer period (Ford and GM currently allow 90 days), the buyer may cancel the contract by written request within 60 days after receipt of the contract and receive a full refund if no claims have been made against the contract. If a claim has been made, a pro rata refund, based on elapsed time or mileage, must be made.

The buyer may cancel after the initial cancellation period and receive a pro rata refund. The seller may also assess a cancellation fee, not to exceed \$25, for cancellations after the initial cancellation period.

The same cancellation rights would apply to a service contract on a used car sold without an express warranty, except that the initial cancellation period need only be 30 days rather than 60 days.

Fiscal Impact

None. No state-mandated local program.

Socio-Economic Impact

(Current industry practice with regard to cancellation and refunds, contract delivery and contract exclusions varies widely. This bill will standardize these practices and give service contract purchasers protection against "hidden" coverage exclusions and unreasonable cancellation policies.)

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Interested Parties

Proponents: Automobile Club of Southern California
(sponsor)
Attorney General
Department of Consumer Affairs
Ford Motor Corporation

Neutral: General Motors
Independent Automobile Dealers Association
Motor Car Dealers Association
(Northern and Southern California)

Proponents' arguments are set forth in Background, above.

There is no known opposition to the bill in its present form.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED, for the reasons stated above.

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Automobile Club of Southern California

1225 EIGHTH STREET, SUITE 375, SACRAMENTO, CALIFORNIA 95814

AB-2285

LEGAL DIVISION

September 11, 1985

Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

RECEIVED

SEP 11 1985

Ans'd.....

Dear Governor Deukmejian:

Re: Assembly Bill 2285

The Automobile Club of Southern California respectfully requests your signature on Assembly Bill 2285 by Assemblywoman Moore.

Assembly Bill 2285, dealing with motor vehicle extended warranty contracts, was sponsored by the Auto Club. This bill will simply require service contracts to disclose exclusions as well as the contract's terms and conditions at the time of purchase. In addition, this bill will require motor vehicle service contracts to be cancelable by the buyer and provides for either a full refund or pro-rata refund depending upon the length of time the buyer has been in receipt of the contract.

The Auto Club became aware of several problems related to extended service warranty contracts due to a lack of information with regard to the contract's provisions at the time of purchase and an inability of a purchaser to cancel the contract when the vehicle was involved in a total loss shortly after purchase.

AB 2285 enjoys the support of the Ford Motor Company, the Attorney General of the State of California, the California State Automobile Association, the S.A.F.E. Federal Credit Union, and the Consumer Advisory Council to the Department of Consumer Affairs. Amendments to AB 2285 in the Senate Insurance, Claims and Corporations Committee removed any opposition to the bill.

If we can be of any assistance in answering any questions with regard to AB 2285, please do not hesitate to ask.

Sincerely,

THOMAS M. DUNIPACE
Legislative Counsel

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TMD:mib

bcc: Assemblywoman Moore

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Sacramento Address
State Capitol
Sacramento 95814
Telephone: (916) 445-8800

District Office Address
2731 Stocker Street, Suite 106
Los Angeles, CA 90008
(213) 292-0605



Assembly California Legislature

COMMITTEES:

Consumer Protection
Finance and Insurance
Public Employees and
Retirement
Public Safety
Utilities and Commerce,
Chairwoman

GWEN MOORE
ASSEMBLYWOMAN, FORTY-NINTH DISTRICT

September 20, 1985

The Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Re: Assembly Bill 2285

Dear Governor Deukmejian:

I am writing to commend to you and urge you to sign my Assembly Bill 2285 which the Legislature approved and sent to your desk.

This consumer protection measure requires automobile service contracts to disclose to consumers a contract's exclusions as well as terms and conditions at the time of purchase. It also requires that the contract or a descriptive brochure be given to the purchaser at the time of purchase, and that the contract itself be delivered to the buyer ~~with~~ within 60 days of purchase.

In addition, AB 2285 requires motor vehicle service contracts to be cancellable by the buyer and provides for a full or pro-rata refund depending on the length of time the buyer has had the contract and whether any claims have been made against it.

Currently, a number of consumers have complained about a lack of information at the time of purchase of a contract or the inability to cancel the contract in the event the motorist is involved in a total loss of the vehicle. AB 2285 will resolve these problems.

Sponsored by the Southern California Automobile Association, AB 2285 is the product of discussions among new and used

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September 20, 1985

Page 2

automobile representatives, the Department of Consumer Affairs, the sponsor, and the author. As a result, there is no opposition to this measure which provides protections to the consumer without adversely affecting automobile dealers or manufacturers.

Among the bill's supporters are the Attorney General, S.A.F.E. Federal Credit Union, the Department of Consumer Affairs, Ford Motor Company and the California State Automobile Association.

I urge you to sign AB 2285 into law.

Yours sincerely,

GWEN MOORE
49th Assembly District

GM:AK:ch

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the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with the provisions of this chapter.

SEC. 9. Section 11349.9 is added to the Government Code, to read:

11349.9. Every document, other than a notice of proposed rulemaking action, required to be published in the California Administrative Notice Register by this chapter, shall be published in the first edition of the notice register following the date of the document.

CHAPTER 1045

An act to add Section 6359.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. Section 6359.7 is added to the Revenue and Taxation Code, to read:

6359.7. As incidental to the exemption provided for in Section 6359, there are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of ice or dry ice used or employed in packing and shipping or transporting food products for human consumption when the food products are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it pursuant to the act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on January 1, 1986.

CHAPTER 1046

An act relating to veterans, and making an appropriation therefor.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. The Legislature finds and declares that the study of the feasibility of establishing a second Veterans' Home of California in southern California requested by Assembly Concurrent Resolution No. 43 of the 1983-84 Regular Session (Res. Ch. 93, Stats. 1983) concluded that the facility is needed and that several feasible alternatives exist for its establishment.

It is, therefore, the intent of the Legislature, in enacting this act, to require the true costs of each of these alternatives to be established in pursuance of a sound public policy to determine in advance the implications and ramifications of each of these alternatives.

SEC. 2. The Department of Veterans Affairs shall prepare and submit to the Legislature on or before August 15, 1986, an estimate of the costs under each of the alternatives presented for the establishment in southern California of a second Veterans' Home of California in the report to the Legislature prepared pursuant to Assembly Concurrent Resolution No. 43 of the 1983-84 Regular Session (Res. Ch. 93, Stats. 1983) together with an implementation plan which considers each of those alternatives. The department may contract for any needed services with the Department of General Services or other state agency, and every state agency shall cooperate with the department in this regard.

SEC. 3. The sum of three hundred thousand dollars (\$300,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for purposes of Section 2 of this act.

CHAPTER 1047

An act to amend Sections 1791 and 1794.4 of, and to add Section 1794.41 to, the Civil Code, relating to warranties.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. Section 1791 of the Civil Code is amended to read: 1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family,

or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(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) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "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.

(e) "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.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

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

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

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

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

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(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are intended to assist the limited vision of the person so disabled.

(q) "Catalogue or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

SEC. 2. 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 that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract.

SEC. 3. Section 1794.41 is added to the Civil Code, to read:

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

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

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

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

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

refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract within the first 60 days after receipt of the contract, or within the first 30 days after receipt of the contract with respect to a used motor vehicle without manufacturer warranties, a pro rata refund, based on either elapsed time or mileage, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

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

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

CHAPTER 1048

An act to amend Section 33216 of, and to add Sections 33203.1 and 33207.1 to, the Public Resources Code, and to amend and supplement the Budget Act of 1985 by adding Item 3810-302-036 thereto, relating to the Santa Monica Mountains Conservancy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1985. Filed with Secretary of State September 27, 1985.]

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

SECTION 1. Section 33203.1 is added to the Public Resources Code, to read:

33203.1. Notwithstanding Section 33203 or any other provision of this division, the executive director of the conservancy shall give notice of any proposed acquisition of real property, or of any interest in real property, by eminent domain to the city council of the city in which the property is located, or to the board of supervisors of the county in which the property is located if it is in an unincorporated area, at least 45 days prior to the conservancy requesting any action by the State Public Works Board pursuant to Section 15854 of the

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Government Code. If the city council or board of supervisors disapproves of the proposed action, the conservancy shall hold a noticed public hearing on the objections to the use of eminent domain prior to any vote recommending that action by the State Public Works Board.

SEC. 2. Section 33207.1 is added to the Public Resources Code, to read:

33207.1. (a) The conservancy shall, upon the request of a city or county, waive subdivision (b) of Section 33207 if it finds any of the following:

(1) The property is shown as commercial or manufacturing on the general plan, area plan, or local coastal program of the city or county having jurisdiction, whichever is applicable, on the date of enactment of this section at the 1985-86 Regular Session of the Legislature.

(2) The property is within the unincorporated area of a county with a population exceeding 4,000,000 and is to be used for affordable housing, as determined in paragraph (1) of subdivision (d) of Section 52020 of the Health and Safety Code.

(b) Nothing in this division requires any local agency to declare any property surplus.

SEC. 3. Section 33216 of the Public Resources Code is amended to read:

33216. This division shall remain in effect only until July 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1990, deletes or extends that date.

SEC. 4. The Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Wildlife may hold joint hearings during the first year of the 1987-88 Regular Session of the Legislature, with notice and full opportunity for public participation by concerned landowners and state, local, and federal agencies. The committees may make findings and recommendations regarding the achievements of the Santa Monica Mountains Conservancy, and for any necessary amendments to the Santa Monica Mountains Comprehensive Plan or the Santa Monica Mountains Conservancy Act (Division 23 (commencing with Section 33000) of the Public Resources Code), or for changes in land acquisition procedures of the Santa Monica Mountains Conservancy. The committees may report their findings and recommendations to the Legislature.

SEC. 5. Item 3810-302-036 is added to the Budget Act of 1985, to read:

3810-302-036—For capital outlay and local assistance, Santa Monica Mountains Conservancy, payable from the Special Account for Capital Outlay	3,000,000
Schedule:	
(1) 20.10.015—Appraisals, project planning and design.....	15,000
(2) 20.10.115—Lower Zuma Canyon—	

4th District Court of Appeal Division 2.

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CALIFORNIA LEGISLATURE
1985-86 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1985

and

1979-1985 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

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Ch. 1047 (AB 2285) Moore. Warranties: motor vehicles: extended warranties and service contracts.

Existing law regulates consumer warranties, as specified.

This bill would require service contracts sold in lieu of, or in addition to, express warranties to disclose exclusions, as well as terms and conditions. The term "service contract" would be revised so as not to apply to a policy of automobile insurance, as defined.

The bill would also prohibit the offering or sale of service contracts covering motor vehicles purchased for use in the state unless the contract contains specified disclosures and is available for inspection prior to the purchase, and unless either the contract or a brochure containing specified information regarding the contract is delivered to the buyer at or before the time of purchase. The bill would also require the contract itself to be delivered to the buyer within 60 days after the time of purchase and the contract to be cancelable by the purchaser under specified conditions and would provide for a refund to the purchaser.

Ch. 1048 (AB 471) Davis. Santa Monica Mountains Conservancy.

(1) Existing law authorizes the Santa Monica Mountains Conservancy to acquire real property by use of the power of eminent domain by the State Public Works Board.

This bill would require the executive director of the conservancy to give notice of any proposed acquisition of real property or any interest in real property to the city council of the city, or the board of supervisors of the county if the property is in an unincorporated area, in which the property is located at least 45 days prior to the conservancy requesting any eminent domain action by the board. The bill would require the conservancy to hold a noticed public hearing on the objections to the use of eminent domain if the city council or board of supervisors disapproves the proposed action.

(2) Under existing law, with a specified exception, the conservancy has the right of first refusal on any property within the Santa Monica Mountains Zone owned by a public agency and scheduled for disposal as excess lands.

This bill would require the conservancy, upon the request of a city or county, to waive that right of first refusal if the conservancy makes specified findings.

(3) Under existing law, the Santa Monica Mountains Conservancy Act is to be repealed on July 1, 1986.

This bill would extend the repeal date of the act to July 1, 1990.

(4) The bill would authorize the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources to hold joint hearings during the first year of the 1987-88 Regular Session of the Legislature with respect to the Santa Monica Mountains Conservancy and would authorize the committees to report their findings and recommendations to the Legislature.

(5) The bill would add an item to the Budget Act of 1985 that would appropriate \$3,000,000 from the Special Account for Capital Outlay to the conservancy for the Lower Zuma Canyon acquisition and for appraisals and project planning and design.

Ch. 1049 (AB 1955) Molina. State park system: El Pueblo de Los Angeles State Historic Park: concession contracts.

(1) Existing law requires the Department of Parks and Recreation, at the request of the concessionaire, to extend until January 1, 1986, the length of the term of any concession contract or approval within El Pueblo de Los Angeles State Historic Park in effect on September 19, 1983, except that any contract extended is required to be renegotiated, if necessary, to ensure that the rental rates on January 1, 1984, reflect current commercial rental market rates.

This bill would require the department to extend the terms of certain concession contracts or approvals until January 1, 1987, at the request of the concessionaire, and authorize the department to extend those contracts for an additional term up to January 1, 1988. The bill would require periodic renegotiation to ensure that the rental rates reflect current commercial rental market rates.

The bill would also require the parties to the joint powers agreement regarding that park to jointly develop a procedure and enter into an agreement for the awarding of concessions, as specified, thus imposing a state-mandated local program. The bill would provide that any concession contract extended or renegotiated as provided above may be superseded by the implementation of the agreement.

The bill would make legislative findings and declarations with respect to the above.

NOTE: Superior numbers appear as a separate section at the end of the digests.

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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**

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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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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