

No. S266034

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

LISA NIEDERMEIER,  
Plaintiff and Respondent,

v.

FCA US LLC,  
Defendant and Appellant.

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

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**EXHIBITS TO MOTION FOR JUDICIAL NOTICE  
VOLUME 3 OF 9, Pages 589-883 of 2617**

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ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as introduced, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 3 or more times by the dealer, and one time by the manufacturer; or (2) the vehicle is out of service by reason of a nonconformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 20 days, to be calculated 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 1793.2 of the Civil Code is
- 2 amended 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:

LIS-1a



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

8 As a means of complying with paragraph (1) of this  
 9 subdivision, a manufacturer shall be permitted to enter  
 10 into warranty service contracts with independent service  
 11 and repair facilities. The warranty service contracts may  
 12 provide for a fixed schedule of rates to be charged for  
 13 warranty service or warranty repair work, however, the  
 14 rates fixed by such contracts shall be in conformity with  
 15 the requirements of subdivision (c) of Section 1793.3. The  
 16 rates established pursuant to subdivision (c) of Section  
 17 1793.3, between the manufacturer and the independent  
 18 service and repair facility, shall not preclude a good-faith  
 19 discount which is reasonably related to reduced credit  
 20 and general overhead cost factors arising from the  
 21 manufacturer's payment of warranty charges direct to  
 22 the independent service and repair facility. The warranty  
 23 service contracts authorized by this paragraph shall not  
 24 be executed to cover a period of time in excess of one  
 25 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. Unless  
 35 the buyer agrees in writing to the contrary, the goods  
 36 must be serviced or repaired so as to conform to the  
 37 applicable warranties within 30 days. Delay caused by  
 38 conditions beyond the control of the manufacturer or his  
 39 representatives shall serve to extend this 30-day  
 40 requirement. Where such delay arises from nonconforming goods

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

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

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

34 *It shall be presumed that a reasonable number of*  
 35 *attempts have been undertaken to conform a new motor*  
 36 *vehicle to the applicable express warranties if (1) the*  
 37 *same nonconformity has been subject to repair three or*  
 38 *more times by the dealer, and one time by the*  
 39 *manufacturer; or (2) the vehicle is out of service by*  
 40 *reason of a nonconformity which has, since the delivery*

1 *of the vehicle to the buyer, been subject to repair by the*  
2 *dealer for a cumulative total of more than 20 days. In*  
3 *computing the 20 days pursuant to this section, a day shall*  
4 *mean a calendar day or any portion thereof that the*  
5 *dealer's service shop is open for business. The 20 days*  
6 *shall commence on the day when, after the defect is first*  
7 *reported or known, a written estimate of the cost of*  
8 *repairing such defect is first prepared.*

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AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assemblywoman Tanner

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 3 4 or more times by the dealer, and one time by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a noneonformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated 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 1793.2 of the Civil Code is

2 amended to read:



LEGISLATIVE INTENT SERVICE

(800) 958-1977

LIS-1b

1 1793.2. (a) Every manufacturer of consumer goods  
2 sold in this state and for which the manufacturer has  
3 made an express warranty shall:

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

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

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

32 (b) Where such service and repair facilities are  
33 maintained in this state and service or repair of the goods  
34 is necessary because they do not conform with the  
35 applicable express warranties, service and repair shall be  
36 commenced within a reasonable time by the  
37 manufacturer or its representative in this state. Unless  
38 the buyer agrees in writing to the contrary, the goods  
39 must be serviced or repaired so as to conform to the  
40 applicable warranties with

1 conditions 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 goods  
22 to its service and repair facility. All reasonable costs of  
23 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 after a  
32 reasonable number of attempts, the manufacturer shall  
33 either replace the goods or reimburse the buyer in an  
34 amount equal to the purchase price paid by the buyer,  
35 less that amount directly attributable to use by the buyer  
36 prior to the discovery of the nonconformity.

37 It shall be presumed that a reasonable number of  
38 attempts have been undertaken to conform a new motor  
39 vehicle to the applicable express warranties if (1) the  
40 same nonconformity has been subject to repair three four

1 or more times by the dealer, and one time by the  
2 manufacturer; more times by the manufacturer or its  
3 agents; or (2) the vehicle is out of service by reason of a  
4 noneonformity which has, since the delivery of the  
5 vehicle to the buyer, been subject to repair by the dealer  
6 for a cumulative total of more than 20 days. In reason of  
7 repair for a cumulative total of more than 20 days since  
8 the delivery of the vehicle to the buyer. In computing the  
9 20 days pursuant to this section, a day shall mean a  
10 calendar day or any portion thereof that the dealer's  
11 service shop is open for business. The 20 days shall  
12 commence on the day when, after the defect is first  
13 reported or known, a written estimate of the cost of  
14 repairing such defect is first prepared.

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AMENDED IN ASSEMBLY APRIL 27, 1981

AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1787

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Introduced by Assemblywoman Tanner  
(Coauthors: Assemblymen Alatorre, Cramer, Elder,  
Kapiloff, Katz, Martinez, Moorhead, Robinson, Roos,  
Rosenthal, and Tucker)  
(Coauthor: Senator Sieroty)

March 27, 1981

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An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated as specified.

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

LIS-1c





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

1 SECTION 1. Section 1793.2 of the Civil Code is  
2 amended 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 subdivision (c) of Section 1793.3. The  
21 rates established pursuant to subdivision (c) of Section  
22 1793.3, between the manufacturer and the independent  
23 service and repair facility, shall not preclude a good-faith  
24 discount which is reasonably related to reduced credit  
25 and general overhead cost factors arising from the  
26 manufacturer's payment of warranty charges direct to  
27 the independent service and repair facility. The warranty  
28 service contracts authorized by this paragraph shall not  
29 be executed to cover a period of time in excess of one  
30 year.

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

34 (b) Where such service and repair facilities are  
35 maintained in this state and service or repair of the goods  
36 is necessary because they do not conform with the  
37 applicable express warranties, service and repair shall be  
38 commenced within a reasonable time by the

1 manufacturer or its representative in this state. Unless  
2 the buyer agrees in writing to the contrary, the goods  
3 must be serviced or repaired so as to conform to the  
4 applicable warranties within 30 days. Delay caused by  
5 conditions 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 after a  
36 reasonable number of attempts, the manufacturer shall  
37 either replace the goods or reimburse the buyer in an  
38 amount equal to the purchase price paid by the buyer,  
39 less that amount directly attributable to use by the buyer  
40 prior to the discovery of the nonconformity.

1 It shall be presumed that a reasonable number of  
2 attempts have been undertaken to conform a new motor  
3 vehicle to the applicable express warranties if (1) the  
4 same nonconformity has been subject to repair four or  
5 more times by the manufacturer or its agents; or (2) the  
6 vehicle is out of service by reason of repair for a  
7 cumulative total of more than 20 days since the delivery  
8 of the vehicle to the buyer. In computing the 20 days  
9 pursuant to this section, a day shall mean a calendar day  
10 or any portion thereof that the ~~dealer's~~ service shop is  
11 open for business. The 20 days shall commence on the day  
12 when, after the defect is first reported or known, a  
13 written estimate of the cost of repairing such defect is  
14 first prepared.

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AMENDED IN SENATE JULY 7, 1981  
 AMENDED IN ASSEMBLY APRIL 27, 1981  
 AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1787**

**Introduced by Assemblywoman Tanner**  
 (Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,  
 Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, ~~and~~  
~~Tucker~~ *Tucker, Farr, Lockyer, Johnston, Lehman, Torres,*  
*and Maxine Waters*)  
 (Coauthor: Senator Sieroty)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 20 days since the delivery of the vehicle to the buyer, the 20 days to be calculated 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 1793.2 of the Civil Code is  
2 amended 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 subdivision (c) of Section 1793.3. The  
21 rates established pursuant to subdivision (c) of Section  
22 1793.3, between the manufacturer and the independent  
23 service and repair facility, shall not preclude a good-faith  
24 discount which is reasonably related to reduced credit  
25 and general overhead cost factors arising from the  
26 manufacturer's payment of warranty charges direct to  
27 the independent service and repair facility. The warranty  
28 service contracts authorized by this paragraph shall not  
29 be executed to cover a period of time in excess of one  
30 year.

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

34 (b) Where such service and repair facilities are  
35 maintained in this state and service or repair of the goods  
36 is necessary because they do not conform with the  
37 applicable express warranties, service and repair shall be  
38 commenced within a reasonable time by the

1 manufacturer or its representative in this state. Unless  
2 the buyer agrees in writing to the contrary, the goods  
3 must be serviced or repaired so as to conform to the  
4 applicable warranties within 30 days. Delay caused by  
5 conditions 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 after a  
36 reasonable number of attempts, the manufacturer shall  
37 either replace the goods or reimburse the buyer in an  
38 amount equal to the purchase price paid by the buyer,  
39 less that amount directly attributable to use by the buyer  
40 prior to the discovery of the nonconformity.

(800) 666-1917

1 It shall be presumed that a reasonable number of  
2 attempts have been undertaken to conform a new motor  
3 vehicle to the applicable express warranties if (1) the  
4 same nonconformity has been subject to repair four or  
5 more times by the manufacturer or its agents; or (2) the  
6 vehicle is out of service by reason of repair for a  
7 cumulative total of more than 20 days since the delivery  
8 of the vehicle to the buyer. In computing the 20 days  
9 ~~pursuant to~~ *under* this section, a day shall mean a  
10 calendar day or any portion thereof that the service shop  
11 is open for business. The 20 days shall commence on the  
12 day when, after the defect is first reported or known, a  
13 written estimate of the cost of repairing such defect is  
14 first prepared.

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AMENDED IN SENATE MAY 24, 1982

AMENDED IN SENATE JULY 7, 1981

AMENDED IN ASSEMBLY APRIL 27, 1981

AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1787**

Introduced by Assemblywoman Tanner  
(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,  
Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal,  
Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and  
Maxine Waters)

(Coauthor: Senator Sieroty)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, *excluding motorcycles, motorhomes, and off-road vehicles*, to the applicable express warranties if *within one year or 12,000 miles* (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than

LIS-1e



20 30 days since the delivery of the vehicle to the buyer ; the  
20 days to be calculated as specified. The bill would provide  
that the presumption may not be asserted by the buyer until  
after the buyer has resorted to an existing qualified third  
party dispute resolution process, as defined. The bill would  
also provide that a manufacturer shall be bound by a decision  
of the third party process if the buyer elects to accept it, and  
that if the buyer is dissatisfied with the third party decision  
the buyer may assert the presumption in an action to enforce  
the buyer's rights, 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 1793.2 of the Civil Code is  
2 amended 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 subdivision (c) of Section 1793.3. The  
21 rates established pursuant to subdivision (c) of Section  
22 1793.3, between the manufacturer and the independent  
23 service and repair facility, shall not preclude a good-faith  
24 discount which is reasonably related to reduced credit  
25 and general overhead cost factors arising from the

1 manufacturer's payment of warranty charges direct to  
2 the independent service and repair facility. The warranty  
3 service contracts authorized by this paragraph shall not  
4 be executed to cover a period of time in excess of one  
5 year.

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

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

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



1 buyer is unable to effect return shall be at the  
2 manufacturer's expense. The reasonable costs of  
3 transporting nonconforming goods after delivery to the  
4 service and repair facility until return of the goods to the  
5 buyer shall be at the manufacturer's expense.

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

14 ~~It shall be presumed that a reasonable number of~~  
15 ~~attempts have been undertaken to conform a new motor~~  
16 ~~vehicle to the applicable express warranties if (1) the~~  
17 ~~same nonconformity has been subject to repair four or~~  
18 ~~more times by the manufacturer or its agents; or (2) the~~  
19 ~~vehicle is out of service by reason of repair for a~~  
20 ~~cumulative total of more than 20 days since the delivery~~  
21 ~~of the vehicle to the buyer. In computing the 20 days~~  
22 ~~under this section, a day shall mean a calendar day or any~~  
23 ~~portion thereof that the service shop is open for business.~~  
24 ~~The 20 days shall commence on the day when, after the~~  
25 ~~defect is first reported or known, a written estimate of~~  
26 ~~the cost of repairing such defect is first prepared.~~

27 (e) (1) *It shall be presumed that a reasonable number*  
28 *of attempts have been made to conform a new motor*  
29 *vehicle, excluding motorcycles, motor homes and*  
30 *off-road vehicles, to the applicable express warranties if,*  
31 *within one year from delivery to the buyer, or 12,000*  
32 *miles, whichever occurs first, the same nonconformity*  
33 *has been subject to repair four or more times by the*  
34 *manufacturer or its agents, or the vehicle is out of service*  
35 *by reason of repair of nonconformities for a cumulative*  
36 *total of more than 30 calendar days since delivery of the*  
37 *vehicle to the buyer. This presumption shall be a*  
38 *rebuttable presumption affecting the burden of proof in*  
39 *any action to enforce the buyer's rights under subdivision*

40 (d) *and shall not be construed to limit those rights.*

1 (2) *If a qualified third party dispute resolution process*  
2 *exists, and the buyer receives timely notification in*  
3 *writing of the availability of a third party process with a*  
4 *description of its operation and effect, the presumption*  
5 *in paragraph (1) of this subdivision may not be asserted*  
6 *by the buyer until after the buyer has initially resorted to*  
7 *the third party process as required in paragraph (3) of*  
8 *this subdivision. Notification of the availability of the*  
9 *third party process is not timely if the buyer suffers any*  
10 *prejudice resulting from any delay in giving the*  
11 *notification. If a qualified third party dispute resolution*  
12 *process does not exist, or if the buyer is dissatisfied with*  
13 *the third party decision, or if the manufacturer or its*  
14 *agent neglects to promptly fulfill the terms of such third*  
15 *party decision, the buyer may assert the presumption*  
16 *provided in paragraph (1) of this subdivision in an action*  
17 *to enforce the buyer's rights under subdivision (d). The*  
18 *record in the dispute resolution proceeding, including*  
19 *the buyer's written complaint, all other documents and*  
20 *evidence received or considered by the third party and*  
21 *the findings and decision of the third party, shall be*  
22 *admissible in evidence in the action without further*  
23 *foundation. Any period of limitation of actions under any*  
24 *federal or California laws with respect to any person shall*  
25 *be extended for a period equal to the number of days*  
26 *between the date a complaint is filed with a third party*  
27 *dispute resolution process and the date of its decision or*  
28 *the date before which the manufacturer or its agent is*  
29 *required by the decision to fulfill its terms, whichever*  
30 *occurs later.*

31 (3) *A qualified third party dispute resolution process*  
32 *shall be one that complies with the Federal Trade*  
33 *Commission's minimum requirements for informal*  
34 *dispute settlement procedures as set forth in the*  
35 *Commission's regulations in effect on January 1, 1982, at*  
36 *16 Code of Federal Regulations Part 703; that is governed*  
37 *by a board, at least half of whose members consist of*  
38 *representatives of consumers or consumer organizations;*  
39 *whose decisions shall be binding on the manufacturer or*  
40 *its agents if the buyer elects to accept the decision; whose*



1 *decisions include any remedies appropriate under the*  
2 *circumstances including repair, replacement, refund of*  
3 *the purchase price, reimbursement for expenses,*  
4 *compensation for consequential and incidental damages*  
5 *and any other remedies available under the*  
6 *manufacturer's express warranty or under any applicable*  
7 *federal or state law; that prescribes a reasonable time not*  
8 *to exceed 30 days, within which the manufacturer or its*  
9 *agents must fulfill the terms of those decisions, and that*  
10 *prior to April 1 of each year prepares, publishes and*  
11 *submits to the Department of Motor Vehicles an annual*  
12 *report for the preceding calendar year, which describes*  
13 *the process and summarizes the substance of the*  
14 *complaints filed and the decisions rendered (without*  
15 *identifying the names of any individual buyers without*  
16 *their express written consent) and which includes a copy*  
17 *of the audit required by the Commission's regulations on*  
18 *informal dispute resolution procedures.*

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AMENDED IN SENATE JUNE 3, 1982  
AMENDED IN SENATE MAY 24, 1982  
AMENDED IN SENATE JULY 7, 1981  
AMENDED IN ASSEMBLY APRIL 27, 1981  
AMENDED IN ASSEMBLY APRIL 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1787**

Introduced by Assemblywoman Tanner  
(Coauthors: Assemblymen Alatorre, Cramer, Elder, Kapiloff,  
Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal,  
Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and  
Maxine Waters)  
~~(Coauthor: Senator Sieroty)~~ (Coauthors: Senators Roberti,  
Sieroty, and Watson)

March 27, 1981

An act to amend Section 1793.2 of the Civil Code, relating  
to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service  
or repair goods to conform to applicable express warranties  
after a reasonable number of attempts must either replace the  
goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a  
reasonable number of attempts have been undertaken to  
conform a new motor vehicle, *as defined*, excluding  
motorcycles, motorhomes, and off-road vehicles, to the  
applicable express warranties if within one year or 12,000  
miles (80) the same nonconformity, *as defined*, has been

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subject to repair 4 or more times by the manufacturer or its agents *and the buyer has directly notified the manufacturer of the need for repair, as specified*; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, 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 1793.2 of the Civil Code is  
2 amended 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 subdivision (c) of Section 1793.3. The  
21 rates established pursuant to subdivision (c) of Section  
22 1793.3, between the manufacturer and the independent

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

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

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

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

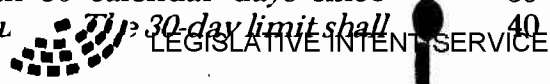


1 service and repair, or arrange for transporting the goods  
2 to its service and repair facility. All reasonable costs of  
3 transporting the goods when, pursuant to the above, a  
4 buyer is unable to effect return shall be at the  
5 manufacturer's expense. The reasonable costs of  
6 transporting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

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

17 ~~(e) (1) It shall be presumed that a reasonable number  
18 of attempts have been made to conform a new motor  
19 vehicle, excluding motoreycles, motor homes and  
20 off/road vehicles, to the applicable express warranties if,  
21 within one year from delivery to the buyer, or 12,000  
22 miles, whichever occurs first, the same noneonformity  
23 has been subject to repair four or more times by the  
24 manufacturer or its agents, or the vehicle is out of service  
25 by reason of repair of noneonformities for a cumulative  
26 total of more than 30 calendar days since delivery of the  
27 vehicle to the buyer.~~

28 *(e) (1) It shall be presumed that a reasonable number  
29 of attempts have been made to conform a new motor  
30 vehicle to the applicable express warranties if, within one  
31 year from delivery to the buyer or 12,000 miles,  
32 whichever occurs first, either (A) the same  
33 nonconformity has been subject to repair four or more  
34 times by the manufacturer or its agents and the buyer has  
35 at least once directly notified the manufacturer of the  
36 need for the repair of the nonconformity, or (B) the  
37 vehicle is out of service by reason of repair of  
38 nonconformities by the manufacturer or its agents for a  
39 cumulative total of more than 30 calendar days since  
40 delivery of the vehicle to the bu*



1 *be extended only if repairs cannot be performed due to*  
2 *conditions beyond the control of the manufacturer or its*  
3 *agents. The buyer shall be required to directly notify the*  
4 *manufacturer pursuant to subparagraph (A) only if the*  
5 *manufacturer has clearly and conspicuously disclosed to*  
6 *the buyer, with the warranty or the owner's manual, the*  
7 *provisions of this subdivision and that of subdivision (d),*  
8 *including the requirement that the buyer must notify the*  
9 *manufacturer directly pursuant to subparagraph (A).*  
10 This presumption shall be a rebuttable presumption  
11 affecting the burden of proof in any action to enforce the  
12 buyer's rights under subdivision (d) and shall not be  
13 construed to limit those rights.

14 (2) If a qualified third party dispute resolution process  
15 exists, and the buyer receives timely notification in  
16 writing of the availability of a third party process with a  
17 description of its operation and effect, the presumption  
18 in paragraph (1) of this subdivision may not be asserted  
19 by the buyer until after the buyer has initially resorted to  
20 the third party process as required in paragraph (3) of  
21 this subdivision. Notification of the availability of the  
22 third party process is not timely if the buyer suffers any  
23 prejudice resulting from any delay in giving the  
24 notification. If a qualified third party dispute resolution  
25 process does not exist, or if the buyer is dissatisfied with  
26 the third party decision, or if the manufacturer or its  
27 agent neglects to promptly fulfill the terms of such third  
28 party decision, the buyer may assert the presumption  
29 provided in paragraph (1) of this subdivision in an action  
30 to enforce the buyer's rights under subdivision (d). The  
31 ~~record in the dispute resolution proceeding, including~~  
32 ~~the buyer's written complaint, all other documents and~~  
33 ~~evidence received or considered by the third party and~~  
34 ~~the findings and decision of the third party;~~ shall be  
35 admissible in evidence in the action without further  
36 foundation. Any period of limitation of actions under any  
37 federal or California laws with respect to any person shall  
38 be extended for a period equal to the number of days  
39 between the date a complaint is filed with a third party  
40 dispute resolution process and the date of its decision or

1 the date before which the manufacturer or its agent is  
 2 required by the decision to fulfill its terms, whichever  
 3 occurs later.

4 (3) A qualified third party dispute resolution process  
 5 shall be one that complies with the Federal Trade  
 6 Commission's minimum requirements for informal  
 7 dispute settlement procedures as set forth in the  
 8 Commission's regulations in effect on January 1, 1982, at  
 9 16 Code of Federal Regulations Part 703; that is governed  
 10 by a board, at least half of whose members consist of  
 11 representatives of consumers or consumer organizations;  
 12 whose decisions shall be that renders decisions which are  
 13 binding on the manufacturer or its agents if the buyer  
 14 elects to accept the decision; whose decisions include any  
 15 remedies appropriate under the circumstances including  
 16 repair, replacement, refund of the purchase price,  
 17 reimbursement for expenses, compensation for  
 18 consequential and incidental damages and any other  
 19 remedies available under the manufacturer's express  
 20 warranty or under any applicable federal or state law;  
 21 that prescribes a reasonable time not to exceed 30 days,  
 22 within which the manufacturer or its agents must fulfill  
 23 the terms of those decisions ; ; and that prior to April 1 of  
 24 each year prepares, publishes and submits each year  
 25 provides to the Department of Motor Vehicles an a  
 26 report of its annual report for the preceding calendar  
 27 year, which describes the process and summarizes the  
 28 substance of the complaints filed and the decisions  
 29 rendered (without identifying the names of any  
 30 individual buyers without their express written consent)  
 31 and which includes a copy of the audit required by the  
 32 Commission's regulations on informal dispute resolution  
 33 procedures.

34 (4) For the purposes of this subdivision the following  
 35 terms have the following meanings:

36 (A) "Nonconformity" means a nonconformity which  
 37 substantially impairs the use, value, or safety of the new  
 38 motor vehicle.

39 (B) "New motor vehicle" means a new motor vehicle  
 40 which is used or bought for use

1 family, or household purposes, but does not include  
 2 motorcycles, motorhomes, or off-road vehicles.

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Assembly Bill No. 1787

CHAPTER 388

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor July 7, 1982. Filed with Secretary of State July 7, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, as defined, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read:  
1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

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

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service

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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. 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 in conformity with 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.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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



(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

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

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

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

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VOLUME 1  
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*



A.B. No. 1787—Tanner, Alatorre, Cramer, Elder, Kapiloff, Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and Maxine Waters (Senators Roberti, Sieroty, and Watson, coauthors).

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

1981

- Mar. 27—Introduced. To print.  
 Mar. 30—Read first time.  
 Mar. 31—From printer.  
 April 7—Referred to Com. on C.P. & T.M.  
 April 9—Art. IV, Sec. 8(a) of the Constitution dispensed with and Joint Rule 55 suspended.  
 April 22—From committee chairman, with author's amendments: Amend, and re-refer to Com. on C.P. & T.M. Read second time and amended.  
 April 23—Re-referred to Com. on C.P. & T.M.  
 April 27—From committee chairman, with author's amendments: Amend, and re-refer to Com. on C.P. & T.M. Read second time and amended.  
 April 29—Re-referred to Com. on C.P. & T.M.  
 April 30—From committee: Do pass. (Ayes 5. Noes 3.) (April 28.)  
 May 4—Read second time. To third reading.  
 May 18—To inactive file on motion of Mrs. Tanner.  
 May 28—From inactive file. To third reading.  
 June 11—Made special order for 10:30 a.m. Monday, June 15.  
 June 15—Read third time, passed, and to Senate. (Ayes 48. Noes 22. Page 4860.)  
 June 16—In Senate. Read first time. To Com. on RLS. for assignment.  
 June 22—Referred to Com. on JUD.  
 July 7—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.  
 Aug. 11—In committee: Set, first hearing. Hearing canceled at the request of author.  
 Aug. 25—In committee: Hearing postponed by committee.  
 Aug. 26—In committee: Hearing postponed by committee.
- 1982
- May 24—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, ~~amended~~, and re-referred to Com. on JUD.  
 June 2—From committee: Amend, and do pass as amended. (Ayes 6. Noes 0.)  
 June 3—Read second time, amended, and to third reading.  
 June 17—Made special order for 10 a.m. Thursday, June 24.  
 June 24—Read third time, passed, and to Assembly. (Ayes 28. Noes 4. Page 11356.)  
 June 24—In Assembly. Senate amendments concurred in. To enrollment. (Ayes 58. Noes 6. Page 15676.)  
 June 25—Enrolled and to the Governor at 5 p.m.  
 July 7—Approved by the Governor.  
 July 7—Chaptered by Secretary of State—Chapter 388, Statutes of 1982.



ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS  
ASSEMBLYWOMAN SALLY TANNER, Chairwoman

BILL: AB 1787, as amended April 22, 1981 HEARING DATE: April 28, 1981

AUTHOR: Assemblywoman Sally Tanner

SUBJECT: Automobile Warranties

-----  
WHAT THE BILL DOES:

AB 1787 would require automobile warrantors to either replace a vehicle or reimburse a buyer if a defect on a new vehicle is not repaired within four repair attempts, or if the car is out of service for more than 20 days.

BACKGROUND:

In December 1979 the Assembly Committee on Labor, Employment and Consumer Affairs conducted a two-day interim hearing on the subject of automobile warranties. Testimony recorded at that hearing revealed, among other things, a high level of consumer frustration with defective new cars and warranty performance. A specific problem noted by the Committee was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement, if goods aren't repaired after a "reasonable number of attempts," it is unclear what "reasonable" means. Refunds and replacements of new cars are rare.

AB 2705 (Tanner) was introduced last year in response to that reported problem. The bill was passed by the Assembly but was defeated in the Senate Judiciary Committee by one vote. AB 2705 offered a range of specific remedies, including a proposed "standard" for defining "reasonable."

PURPOSE:

To establish a standard for when a "reasonable number of repair attempts" has been undertaken by a new car warrantor.

ANALYSIS:

AB 1787 adds language to existing product warranty law to specify when a "reasonable number of attempts" to repair has occurred with regard to new motor vehicles. The proposed standard is:

1. Four attempts by the manufacturer or its agents to repair a single defect; or
2. Twenty days out of service by reason of repair.

Current law permits the warrantor to reduce the value of the refund or replacement by an "amount directly attributable to use by the buyer prior to the discovery of the nonconformity."

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Proponents of the legislation maintain that the current law is not useful to consumers who purchase defective vehicles, because auto dealers and manufacturers want endless opportunities to correct defects. Consumer groups argue that the clear standard proposed in AB 1787 offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents of the measure argue that current law is adequate, that the measure will increase the number of "frivolous and unmeritorious" lawsuits, and that the automotive industry has developed its own dispute resolution mechanisms to deal with complaints.

SUPPORT

Department of Consumer Affairs  
Consumers Union  
California Consumer Affairs Association  
San Francisco Consumer Action  
Santa Cruz County District Attorney  
Santa Cruz County Consumer Affairs  
Los Angeles County Department of Consumer Affairs  
Consumers Aid of Shasta, Inc.  
Center for Auto Safety  
Stanislaus County Department of Consumer Affairs  
State Consumer Advisory Council

OPPOSE:

Motor Vehicle Manufacturers Association  
Chrysler  
General Motors Corporation  
California Manufacturers Association  
Ford Motor Company

PREPARED BY:  
Kathleen Hamilton  
April 27, 1981



ASSEMBLY THIRD READING

AB 1787 ( Tanner ) As Amended: April 27, 1981

ASSEMBLY ACTIONS:

COMMITTEE C. P. & T. M. VOTE 5-3 COMMITTEE \_\_\_\_\_ VOTE \_\_\_\_\_

Ayes: Chacon, Elder, Katz, Sher, Tanner Ayes:

Nays: Konnyu, Wright, Sebastiani Nays:

DIGEST

This bill requires automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out of service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would mean a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would begin on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

FISCAL EFFECT

None

COMMENTS

The Assembly Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

This bill establishes a standard for when a "reasonable" number of repair attempts has been undertaken by a new car warrantor. Consumer groups maintain that current law is not useful because auto dealers and manufacturers want endless opportunities to correct defects. Proponents of the bill argue that the clear standard proposed in this bill offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

*E* Opponents argue that current law is adequate, that this bill will increase the number of frivolous and unmeritorious lawsuits, and that the automotive industry has developed its own dispute resolution mechanism to deal with complaints.

5/7/81  
22/fh/AFA-3:47

ASSEMBLY OFFICE OF RESEARCH

AB 1787



ASSEMBLY THIRD READING

AB\_\_1787\_\_ (\_\_\_\_Tanner\_\_\_\_) As Amended: April 27, 1981

ASSEMBLY ACTIONS:

COMMITTEE C. P. & T. M. VOTE 5-3 COMMITTEE \_\_\_\_\_ VOTE \_\_\_\_\_

Ayes: Chacon, Elder, Katz, Sher, Tanner Ayes:

Nays: Konnyu, Wright, Sebastiani Nays:

DIGEST

This bill requires automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out of service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would mean a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would begin on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

FISCAL EFFECT

None. According to the Legislative Analyst, the Department of Motor Vehicles, which licenses vehicle dealers, anticipates no additional cost as a result of this bill.

COMMENTS

The Assembly Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

This bill establishes a standard for when a "reasonable" number of repair attempts has been undertaken by a new car warrantor. Consumer groups maintain that current law is not useful because auto dealers and manufacturers want endless opportunities to correct defects. Proponents of the bill argue that the clear standard proposed in this bill offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents argue that current law is adequate, that this bill will increase the number of frivolous and unmeritorious lawsuits, and that the automotive industry has developed its own dispute resolution mechanism to deal with complaints.

BILL # AE 1787 AUTHOR Tanner CONSULTANT Moseley  
POLICY COMMITTEE CP & TM HEARING DATE 4-28-81 BILL 4-22-81  
SPONSOR \_\_\_\_\_ SUBJECT Automobile Lemons

**FILE COPY**

SIGNIFICANT PROVISIONS:

This bill would amend the Song-Beverly Consumer Warranty Act by adding a new paragraph to Civil Code Section 1793.2(d) stating that a reasonable number of attempts shall be presumed to have been undertaken when: (1) the same nonconformity (defect) has been subject to repair 4 times by the manufacturer or its agent, or (2) the vehicle has been out of service by reason of repair for a cumulative total of more than 20 days from the time of sale. The twenty days would include any portion of a day the repair shop is open for business and the time period commences after the defect is reported and the shop writes up an estimate of the necessary repairs.

FISCAL IMPACT: Minor.

COMMENTS: 1. Nothing in the bill specifies the critical driving operations the the vehicle. What if the radio or speakers or other non-critical driving operation is a problem? 2. The bill references "nonconforming goods", meaning a "lemon." This is a very broad term; there is no objective standard outlined in the bill to determine if the vehicle is "nonconforming" or conforming. This could be a serious legal problem. 3. The bill holds the manufacturer responsible for replacing the non-conforming vehicle or reimburse its owner for the purchase price. However, it is not proper to assume that the Manufacturer has direct control over its dealers' service operations from whom the customer bought the car.

Staff Recommendation: NO vote.

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AB 1787 (TANNER)

The Auto "Lemon" Bill

Existing California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.), governs the rights and obligations of the parties involved in a purchase of warranted "consumer good" (purchased primarily for "personal, family, or household purposes"). Currently, that law entitles a buyer to a refund or a replacement by the manufacturer when a product is not successfully repaired after a "reasonable number of attempts." The law currently does not provide an objective standard for what is "reasonable".

AB 1787 would:

1. Add a new provision to the Song-Beverly Act which applies only to warranted new motor vehicles (excluding motorcycles, mopeds, and off-road vehicles) used primarily for personal family or household purposes.

① Specify that, [within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same non-conformity (defect) or a cumulative total of 30 calendar days out of service because of repairs or any defect(s)], would be presumed to be "reasonable".

This presumption could be asserted by the buyer in a legal action to obtain a refund or replacement vehicle (minus an amount attributable to the buyer's use). The presumption would be one which affects the burden of proof and would be rebuttable by the manufacturer. Once the buyer proves either the 4 times or 30 days, the burden of proof would shift to the manufacturer to rebut the presumption with facts proving that something more should be adjudged reasonable.

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LEGISLATIVE INTENT SERVICE



ARC-1



FILE COPY

file

AB 1787 (TANNER)

The Auto "lemon" Bill

Under existing California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). Currently, that law entitles a buyer to a refund or a replacement by the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts. The law currently does not provide an objective standard for what is "reasonable".

AB 1787 would:

Add a new provision to the Song-Beverly Act which applies only to warranted new motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.

1

Specify that, within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same non-conformity (defect) or a cumulative total of 30 calendar days out of service because of repairs or any defect(s), would be presumed to be "reasonable".

This presumption could be asserted by the buyer in a legal action to obtain a refund or replacement vehicle (minus an amount attributable to the buyer's use). The presumption would be one which affects the burden of proof and would be rebuttable by the manufacturer. Once the buyer proves either the 4 times or 30 days, the burden of proof would shift to the manufacturer to rebut the presumption with facts proving that something more should be adjudged reasonable.

"Nonconformity" is one which substantially impairs the use, value or safety of the vehicle.

The buyer would be required to directly notify the manufacturer for repair of the same nonconformity once out of the 4 times.

The 30 day limit could be extended only if repairs can't be performed because of conditions beyond the manufacturer's control.

- Require a buyer to first resort to a third party dispute resolution program before he or she could use the "lemon" presumption in a lawsuit - if a program meeting specified criteria has been established by the manufacturer of the buyer's vehicle.
- The criteria for the dispute resolution program are derived from those specified by federal consumer warranty law, the Magnuson-Moss Consumer Warranty Act (15 United States Code, Sections 2301-2310) and its Federal Trade Commission (F.T.C.) regulations (16 Code of Federal Regulations Part 703).

The bill's minimum criteria for a dispute resolution program include requirements for:

- 1) Notifying a buyer about the existence, location and method for using the program, both at the time of sale (in the warranty itself) and later, if a dispute arises.

-continued-

ARC-3

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- 2) Insulating the program from the influence of the manufacturer over any decision making - including adequate funding for the program and qualifications for the program's administration.
- 3) The program to be free to the buyer.
- 4) The operation of the program including that:
  - a) A decision generally be reached within 60 days of receipt of a complaint.
  - b) The decision is not binding on the consumer; but shall be on the manufacturer if the consumer chooses to sue it. (Added to Federal criteria by bill.)
  - c) A party to the dispute be given the opportunity to rebut contradictory evidence offered by the other.
  - d) The manufacturer complete any work required within 30 days. (Added to Federal criteria by bill).
  - e) The time limits on a buyer's right to sue be extended during the period he or she is involved in the dispute program. (Added to Federal criteria by bill).
- 5) For the keeping of specified records of the program's operation.
- 6) For an annual, independent audit of the program and its implementation - which would be sent to the Department of Motor Vehicles.
- 7) For the availability of statistical summaries and reports of the program upon request.



AB 1787  
MAJOR CHANGES MADE BY AMENDMENTS ACCEPTED  
IN  
SENATE JUDICIARY COMMITTEE

1. Define "nonconformity" as one which substantially impairs the use, value or safety of a vehicle.
2. Require the buyer to notify the manufacturer directly at least once out of the 4 times for repair of the same nonconformity. Requires the manufacturer to notify the buyer of the refund/replacement provisions and the direct notice to manufacturer requirement.
3. Permit extension of the 30 day limit, but only for conditions beyond the manufacturer's control.
4. Clarify that the bill only applies to vehicles used primarily for personal, family or household purposes (i.e., non-commercial use).
5. Delete some inconsistencies between the bill's criteria for dispute programs and those in the federal law.



# CALIFORNIA LEGISLATURE



## ASSEMBLY REPUBLICAN CAUCUS

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HON. CAROL HALLETT, MINORITY FLOOR LEADER  
HON. BOB NAYLOR, CAUCUS CHAIRMAN  
HON. ROSS JOHNSON, CAUCUS VICE CHAIRMAN  
HON. PHILLIP D. WYMAN, MINORITY WHIP  
HON. GILBERT R. MARGUTH, JR., DEPUTY WHIP  
HON. DON SEBASTIANI, CAUCUS SECRETARY

MEMO TO: Brien Benson  
FROM: Bill Moseley  
DATE: May 7, 1981  
SUBJECT: AB 1787, Sally Tanner's Lemon Bill

We have now identified potential costs of \$100,000 in relation to AB 1787. In my opinion, the leadership should make a strong effort to have the bill referred to Ways and Means.

- This would be a GGS coup for us.
- I think it is a bad bill, which will actually harm consumers more than it will help them.
- The auto dealers and manufacturers know we have been working on their side.
- I have told representatives of this lobby that if this bill is killed we would like to get together and perhaps introduce a more meaningful bill.

ANALYSIS OF ASSEMBLY BILL NO. 1787 (Tanner)  
As Amended in Assembly April 27, 1981  
1981-82 Session

**FILE COPY**

AB 1787 (Am. 4/27/81)

Fiscal Effect:

Cost: Potential, undeterminable, annual vehicle warranty enforcement costs to the Motor Vehicle Account, State Transportation Fund.

Revenue: None.

Analysis:

This bill clarifies the law pertaining to new vehicle warranties by specifying the circumstances under which a manufacturer or dealer must replace a defective vehicle or otherwise compensate the buyer.

Existing law requires the vehicle manufacturer either to replace the vehicle or refund, on an adjusted basis, its purchase price after a "reasonable" number of attempts to repair the vehicle have failed. This bill defines what shall constitute a reasonable number of such attempts.

The Department of Motor Vehicles, which licenses vehicle dealers, estimates a potential annual cost of approximately \$48,000 to handle an increase in consumer complaints to the department regarding warranties. In addition, the department could incur costs associated with actions against dealers if this bill results in the department's being able to make more precise determinations of failure to comply with warranty law. This potential cost is undeterminable.

# 'Lemon' bill gives carmaker 4 tries

By ED MENDEL

SACRAMENTO UNION CAPITOL BUREAU

"The first thing that went wrong was the steering wheel fell in my lap," said Bill Counter of Napa.

He had just bought a new 1979 Cadillac. When passengers put their feet under the seat of his auto, he said, they got grease on them.

He said the first engine went at 2,400 miles, the second at 14,700 miles, and there was more trouble after that.

"I have been at a loss with no recourse," Counter told an Assembly committee Tuesday as it heard the so-called "lemon law."

AB1787  
AB1787 by Assemblywoman Sally Tanner, D-El Monte, would require that an auto buyer be given another auto or his money back if a defect is not repaired within four attempts or the auto is out of service for more than 20 days.

Tanner said the bill is needed because existing law requiring replacement or reimbursement does not define the "reasonable number" of repair attempts that must be made first.

Industry representatives said they oppose the bill because it would create lawsuits rather than solve the

problem.

They said the bill does not deal with the key question of who decides whether the defect is fixed.

Officials from General Motors, Ford, Chrysler and Volkswagen of America all said they have recently set up mediation and arbitration programs to resolve new-car disputes.

Tanner's bill won approval in the Consumer Protection and Toxic Materials Committee and was sent to the Ways and Means Committee on a 5-3 vote.

Lou and Kitty Arges of West Sacramento said they bought a 1979 Lincoln. A malfunction made the car prone to suddenly stop running, said Mrs. Arges, and it was towed to the shop 40 or 50 times.

"We bought the car in the Oakland area," her husband said. "We could never drive it there. We were afraid to take it out of town."

The couple said they tried the Better Business Bureau, the district attorney and the state Department of Motor Vehicles before filing a lawsuit as a last resort.

Bill Boultas of Ford said the Argeses are being charged \$4 a day for storage because the car has not been picked up.



Sally Tanner  
Setting guideline

"It's our opinion now that the Arges car has been repaired satisfactorily," said Boultas.

Al Davis said Chrysler began a Consumer Satisfaction Board in Long Island in 1979 and set up the final unit in the nationwide network in Houston this month.

He said the five-member boards have a public member, a consumer advocate, a Chrysler representative, a mechanic and a car dealer.

G. Lee Ridgeway said General Motors has been testing a Better Business Bureau mediation program in the Bay area since 1979.



4/1/87  
FILE COPY AB 1787

## Auto 'Lemon' Aid

**A** bill that offers relief to Californians who thought they were buying a new car but got a lemon is one step closer to becoming law. AB 1787, better known as the "lemon" bill, has won approval from the Senate Judiciary Committee and has been sent to the Senate floor for a vote. It merits passage.

Under existing California warranty law, a new-car buyer is entitled to a refund or replacement by the manufacturer after a "reasonable" number of attempts have been made to repair the defect. The problem with this law was deciding what constitutes "reasonable." Would two repair attempts be sufficient? Ten? There was no clear definition and, consequently, consumers complained about the law's ineffectiveness.

AB 1787, by Assemblywoman Sally Tanner, D-El Monte, changes all that. The measure defines "reasonable" as four repair attempts on the same problem or a total of 30 days out of service because of any defect within the first year or 12,000 miles, whichever comes first. The consumer must notify the manufacturer of the problem at least once during the course of those repair efforts.

If a new, warranted car meets these specifics, the car is presumed a lemon and the consumer entitled to a refund or replacement. Under certain circumstances, however, the owner of a defective car must go through an arbitration panel funded but not influenced by the automaker. The decision of the panel is not binding on the buyer. If the owner isn't satisfied with a ruling, he or she can sue using the "lemon" presumption.

The benefit of an arbitration panel is that it

must make a decision within 40 days, which is far less time than it would take to go through the judicial system. Obviously, the best solution is for the auto industry to work out the defects before a car is sold, but as long as there are lemons on the road, there is a need for lemon aid.

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LEGISLATIVE INTENT SERVICE



ARC-9

CAR DEALERS' VIEW

12/26/82

AB 1787

# 'Lemon Law' Seen Sales Aid

By SUZANNE CHONEY

Staff Writer, The San Diego Union

Some local car dealers said yesterday the "lemon law" passed by the Legislature this week may help restore sagging car sales and consumer confidence in the auto industry.

"It may cost some dealers more money but I think the public has a fear of auto dealers as it is," said Jerry Burdett, general sales manager for San Diego Volvo. "Now if consumers feel they are protected, that's got to be good for business."

"I'm fairly sympathetic," said a spokesman for Bob Lewis Volkswagens. "I was a consumer before I was in the auto business, and I know how frustrating it can be to deal with a problem car."

"It's a fair deal for the consumers and for the dealers," said Jack Olson, general manager of Harloff BMW-Volvo in Encinitas. "Dealers need as much protection as consumers. There needs to be guidelines as to what a lemon is, and this law will help provide that."

The measure, AB 1787, by Assemblywoman Sally Tanner, D-El Monte, was approved by the Legislature Thursday, and is awaiting Gov. Brown's signature. If signed into law, it would take effect Jan. 1, 1983.

Under the law, automakers would be required to replace new cars or trucks designated as lemons or reimburse the buyers.

A "lemon" would be a new vehicle that continues to malfunction after four repair attempts have been made or be out of service for more than 30 days. Both provisions apply only in the first year or 12,000 miles.

If repair efforts fail to satisfy the customer, the next step would be an arbitration process offered by the manufacturer.

The auto industry initially objected to the bill because it failed to specify what was considered a major or minor defect in making the car a lemon. The bill was amended to provide that the problem had to be a "non-conformity," one which "impairs the use, value or safety of the vehicle," said Jay De Furia, an aide to Tanner.

A broken radio or cigarette lighter would not qualify the car as a lemon, according to the bill, but a car window that did not roll up "could be considered an impairment of the value of the car," De Furia said.

"There are no lemons; there are bad mechanics," said Olson. "The law will give the dealer and the manufacturer a chance to repair the car without having to give the customer a new car. Anything can be repaired on a new car."

Some car dealers, like Larry Salas of Drew Ford, believe the law will only "add to the cost of buying a car," and is "unnecessary."

"There's never been a time when dealers didn't want to see customers happy," he said.

Rosemary Shahan-Dunlap, who helped organize Motor Voters in San Diego after her own problems with a car dealership, and testified on behalf of the lemon law several times, said the bill is "fair and reasonable."

The next step, she said, will be educating consumers and attorneys about the bill, and working for the passage of a similar law for used cars, although she was less optimistic about its chances of success.

The House of Representatives last month overturned a Federal Trade Commission rule that would have required auto dealers to disclose known defects in their used cars.

De Furia said a state bill that would have provided protection to the used car buyer "went down in flames" two years ago. He added that Tanner is not sure whether she will pursue the issue with another bill.

AB 1787  
5

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Sacramento Union  
2/12/81

## 'Lemon' car bill stalled

UNITED PRESS INTERNATIONAL

A bill that would increased rights to owners of new-car "lemons" was delayed in a Senate committee Tuesday when it became obvious that the committee wouldn't support the measure.

Assemblywoman Sally Tanner, D-El Monte, reluctantly agreed to try again to negotiate with the automobile industry on the bill, AB1787. A similar proposal died last year in the same committee under opposi-

tion from the automobile industry.

The latest bill would establish a presumption that any new car out of service for more than 20 days after delivery to the buyer is a lemon and should be replaced or the buyer reimbursed. That presumption could be rebutted in court.

Tanner was at first reluctant to delay a vote on the bill, protesting that she unsuccessfully attempted last year to negotiate a compromise with the auto industry.

AB1787





AB 1787  
**'Lemon law'**  
*approved  
in Assembly*

SACRAMENTO UNION CAPITOL BUREAU

The so-called "lemon law," which would give automobile buyers a replacement or refund when repeated attempts to repair a defective new car fail, was approved 45-22 by the Assembly on Monday and sent to the Senate.

AB1787 by Assemblywoman Sally Tanner, D-El Monte, would require that an auto buyer be given another auto or his money back if a defect is not repaired within four attempts or the auto is out of service for more than 20 days.

Tanner said the bill is needed because existing law requiring replacement or reimbursement does not define the "reasonable number" of repair attempts that must be made first.

Advocates of the bill say it will encourage improved quality control by manufacturers and improved repair service by dealers.

Industry representatives have argued that the bill will create lawsuits because it does not deal with the key question of who decides whether the defect is fixed.

At a hearing in April, officials from General Motors, Ford, Chrysler and Volkswagen of America said mediation and arbitration programs to resolve new-car disputes were in various stages of development.

# 61 pct. turnout in state voting

FILE COPY

SACRAMENTO UNION CAPITOL BUREAU

About 61 percent of the eligible state workers cast mail ballots in the recently completed state government collective bargaining elections, according to an official with the Public Employment Relations Board.

Janet Caraway, PERB's Sacramento region director, said Monday that about 72,250 out of a possible 118,112 persons turned in ballots over the 30-day election period, which ran from May 11 to June 11.

Results from the balloting in 20 separate units to determine bargaining agents for state workers will not be known for at least two weeks, Caraway said.

Ballot tabulations are scheduled between June 29 and July 1, said Caraway, who noted the interim period will permit those who may not have received election materials to request and submit duplicate ballots. This interim period also allows for fielding ballot challenges from unions and other questions.

Caraway called the 61 percent "a pretty large turnout," considering the mail election format and the fact

that several units, containing about 66,000 eligible voters, were uncontested.

Election interest was varied, with a low turnout of 46 percent in the relatively small (1,900) medical and social services support unit, to the 88 percent of eligible voters who cast ballots for either California State Employees Association or Department of Forestry Employees Association in the fire fighter unit.

There also was a strong 85 percent turnout in the 4,800-member professional engineer unit, which saw a three-way contest between CSEA, Professional Engineers in California Government and the League of Engineers and Allied Technical Employees.

Another good showing occurred in the attorney and hearing officer unit, where 77 percent of the eligible workers selected between the Association of California State Attorneys and the Judicial and Legal Coalition, a grouping of CSEA, State Trial Attorneys Association and the Administrative Law Judges Council.

Although the California Association of Highway Patrolmen was uncontested in the highway patrol unit, 67 percent voted.

## Senate approves residential-picket bill

SACRAMENTO UNION CAPITOL BUREAU

A bill to restrict residential picketing by farm labor unions, SB609 by Sen. Jim Nielsen, R-Woodland, was approved 24-2 by the Senate Monday.

The bill would allow residential

picketing by two persons during certain times.

Growers have complained that home picketing is intimidating and puts stress on families. The United Farm Workers, AFL-CIO, says it is a constitutional right.

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 1787

SUMMER  
8/27/81

## Bill for owners of 'lemons' dies

SACRAMENTO (AP) -- The "lemon" bill, an attempt to provide a refund or replacement for a new car that didn't work and couldn't be fixed, died quietly in a Senate committee Wednesday for the second straight year.

Assemblywoman Sally Tanner, D-El Monte, didn't even take her bill to a vote in the Senate Judiciary Committee after it approved an automobile-industry-sponsored amendment that she wouldn't accept.

Although Tanner said she was dropping the bill, the committee chairman, Sen. Omer Rains, D-Ventura, said she could bring it up again next year.

The bill, AB 1787, sponsored by consumer groups and the Brown administration's Consumer Affairs Department, would have strengthened the hand of a buyer of a new car that spent most of its time in the repair shop.

To win a refund or replacement under current law, the customer must have made a "reasonable" number of attempts to repair the defect before going to court.

"Reasonable" is not defined by law, and sponsors of the bill say the word gives manufacturers and dealers too much leeway.

As passed by the Assembly, the bill would have said that if the buyer had made four or more attempts in the first year to repair the same defect, or if the car had been out of service for more than 20 days, the buyer would be judged to have made a "reasonable" number of attempts unless the dealer proved otherwise.

Tanner accepted industry amendments increasing the number of attempts to five.

But she opposed an amendment, sponsored by the Automobile Importers of America, that would tie her bill to arbitration programs sponsored by domestic automakers.

The three major U.S. manufacturers recently have established panels, which include consumer representatives, to hear consumer complaints. The panels have the power to order refunds.

The companies say the pro-

grams are working well, but consumer groups say they have received complaints of delays, difficult access and overall dissatisfaction.

The amendment would have required a customer to go to an arbitration panel, if there was one in the area, and get a decision before being able to take advantage of the new standards in the bill. A customer who didn't go to a panel would have had to operate under the current standard of a "reasonable" number of attempts.

The amendment was submitted to the nine-member committee, and three senators voted for it: Republicans Robert Beverly of Manhattan Beach and Ed Davis of Chatsworth, and Democrat Robert Presley of Riverside.

With the other members absent or abstaining, Rains declared the amendment adopted, and Tanner withdrew her bill.

She said afterward that she opposed requiring customers to take their cases to the company-sponsored panels.



AB1787  
SAC  
5/26/82

## Committee approves

UNITED PRESS INTERNATIONAL

Legislation requiring auto manufacturers to replace new cars that require excessive repairs during their first year of ownership won unanimous approval Tuesday from the Senate Judiciary Committee.

The so-called "lemon bill," similar to one defeated in 1980 by the same panel, was sent to the floor on a vote of 6-0 after its author, Assemblywoman Sally Tanner, D-El Monte, amended it to neutralize

strong opposition from the auto industry.

The measure, AB1787, "would provide additional legal protection for buyers of warranted new cars with defects that repeatedly defy successful repair," Tanner said.

It would require manufacturers to replace or refund the cost of cars that require four or more repairs for the same defect or that have been out of service a total of 30 days during their first year or first 12,000 miles.

## 'lemon' auto bill

Auto manufacturers were mollified by revisions in the bill that require consumers to notify manufacturers at least one of the four times that a car is repeatedly repaired.

LEGISLATIVE INTENT SERVICE



ARC-14

AB 1787 (Tanner)  
As amended May 24  
Civil Code  
RT

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B  
  
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7

MOTOR VEHICLE WARRANTIES  
-REPLACEMENT OR REFUND-

HISTORY

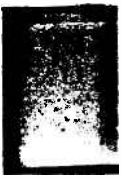
Source: Author

Prior Legislation: AB 2705 (1980) - held in  
this committee

Support: Los Angeles City Attorney; KPIX; KABC;  
Long Beach Independent Press-Telegram;  
Santa Barbara News Press; State Consumer  
Advisory Council; Department of Consumer  
Affairs; California Consumer Affairs  
Association; Cal-Pirg San Diego; National  
Council of Senior Citizens; Motor Voters,  
San Diego; AFL-CIO, State Federation;  
State Building and Construction Trades  
Council of California; United Steelworkers  
of America; Baldwin Park Chamber of  
Commerce; Santa Cruz County District  
Attorney; Consumer Union, San Francisco;  
San Francisco Consumer Action; County of  
Los Angeles, Department of Consumer  
Affairs; California Federation of Women's  
Clubs, Orange District; Consumer Aid of  
Shasta County; Colusa County Board of  
Supervisors; Stanislaus County, Office of  
Consumer Affairs; Los Angeles Private  
Investigation & Patrol Service; California  
Teamsters Public Affairs Council; Center  
for Auto Safety; Chico Consumer Protection  
Agency; Lemon-Aid, San Diego; Consumer  
Federation of California; Legal Aid  
Society of San Mateo County; Consumer  
Coalition

(800) 666-1917  
LEGISLATIVE INTENT SERVICE

(More)



Opposition: Ford; Chrysler; General Motors;  
California Auto Dealers Ass'n;  
California Manufacturers Ass'n; Motor  
Vehicles Manufacturers Ass'n; American  
Honda Motor Co.; Calif. Conference of  
Machinists

Assembly floor vote: Ayes 48 - Noes 22.

KEY ISSUE

SHOULD THERE BE A PRESUMPTION THAT A NEW MOTOR VEHICLE WHICH, WITHIN ITS FIRST YEAR, HAS BEEN REPAIRED UNDER AN EXPRESS WARRANTY FOUR OR MORE TIMES FOR THE SAME DEFECT OR WHICH HAS BEEN OUT OF SERVICE FOR WARRANTY REPAIR MORE THAN 30 CALENDAR DAYS SHOULD BE REPLACED OR THE PURCHASER REIMBURSED BY THE MANUFACTURER?

(800) 666-1917

PURPOSE

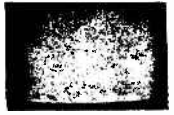
The Song-Beverly Consumer Warranty Act provides a mechanism whereby a consumer can enforce the terms of an express (written) warranty issued by a manufacturer. The Act provides that a manufacturer who is unable to service or repair goods to conform to his express warranty after a "reasonable" number of attempts must either replace the goods or reimburse the buyer, as specified.

LEGISLATIVE INTENT SERVICE

This bill would create a rebuttable presumption that a reasonable number of attempts have been undertaken if, within one year or 12,000 miles, the same defect had been subject to repair four or more times by the manufacturer, or if the vehicle had been out of service for warranty repair for more than 30 calendar days since its delivery to the buyer.



(More)



The presumption could not, however, be asserted where a qualified (as defined) third party dispute resolution process existed until the buyer attempted to resolve his dispute through that process.

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The purpose of the bill is to provide an effective remedy for the automobile buyer who purchases a "lemon."

COMMENT

1. Limited by the Song-Beverly Act

This bill would amend the Song-Beverly Consumer Warranty Act, and would apply only to those transactions covered by the Act.

(a) Not applicable to commercial vehicles

The Song-Beverly Act applies only to "consumer goods," defined as products "used or bought for use primarily for personal, family, or household purposes . . . ."

Thus, vehicles used for commercial purposes are not subject to the Act, and would not be subject to this bill.

(b) Only applicable to terms of express warranty

The purpose of the Song-Beverly Act is to provide a consumer with a means of enforcing the terms of the manufacturer's own warranty. Nothing which is not covered by that warranty is subject to the provisions of the Act.

(More)

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Thus, this bill would apply only to those vehicles or parts of vehicles covered by the manufacturer's warranty. If the vehicle was sold "as is," or the vehicle was warranted but the defect arose in a part of the vehicle not covered by the warranty, the bill would not apply.

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2. Excluded vehicles

The bill's provisions would not cover motorcycles, motor homes or off-road vehicles, even though they were "consumer goods" as defined by the Song-Beverly Act and were subject to the other provisions of the Act.

3. Nature of remedy

(a) Rebuttable presumption of reasonable number

The Song-Beverly Act imposes the duty of replacement or reimbursement on the warrantor who fails to repair the defect in the goods as promised by his warranty after a "reasonable number of attempts."

This bill would create a rebuttable presumption affecting the burden of proof that a reasonable number of attempts for a new motor vehicle would be four or 30 calendar days -- within one year after delivery or 12,000 miles, whichever came first. The presumption could be overcome by a showing on the part of the warrantor that four attempts or 30 days were not reasonable in that particular case.

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LEGISLATIVE INTENT SERVICE



(More)



(b) Replacement or reimbursement.

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Under the Song-Beverly Act if the warrantor fails to repair the goods after a reasonable number of attempts, he shall either replace the goods or reimburse the buyer in an amount "equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer" prior to the discovery of the defect.

(c) Enforcement by litigation.

The Song-Beverly Act is not enforced by any government agency. If a warrantor fails to meet the terms of the Act, the consumer's only remedy is to go to court.

4. Need for bill

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

5. Resorting to dispute resolution process

The presumption created by this bill could not be asserted where a qualified (as defined) third party dispute resolution process was available until after the buyer "resorted" to that process.

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(a) Federal requirement of resorting to process.

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Federal law regulating consumer warranties - the Magnuson-Moss Act - requires a consumer, before he can sue under that Act, to resort to a qualified dispute resolution process if one is available.

AB 1787 would impose a similar requirement on a person wishing to take advantage of presumption in the bill, and would incorporate by reference the federal definitions of a qualified dispute resolution process and of what constitutes "resorting."

(b) Definition of qualified dispute resolution process.

The bill incorporates by reference eight columns of federal regulations describing the procedures of a qualified dispute resolution process, including such matters as the composition of the decision-making panel (no more than one-third connected with the warrantor), the duties of the process to collect information from the disputing parties, the rights of the parties to make an oral presentation, etc.

In addition the bill would require that the process be governed by a board at least one-half of whose member would be consumers, that the decision of the process be binding on the warrantor, and that the warrantor be required to fulfill the terms of the decision within 30 days.

(More)

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SHOULD THE BILL ADOPT ALL OF THE  
COMPLEXITIES OF THE FEDERAL REGULATIONS IN  
ITS DEFINITION OF A QUALIFIED PROCESS?

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(c) Definition of "resort"

The federal regulations provide that the process must act to resolve the dispute within 40 days after the time the buyer has notified it of the dispute. That period may be extended only if the buyer failed to provide adequate information about the complaint, or if the buyer had made no attempt to seek redress directly from the warrantor.

The requirement that the buyer resort to the process is satisfied 40 days after the dispute has been submitted (unless the time has been legally extended) or when the process has made a decision, whichever occurs first.

The bill incorporates this definition by reference.

(d) Exceptions to this requirement

The bill would excuse the buyer from resorting to a dispute resolution process before asserting the presumption if no qualified process was available or if the buyer failed to receive timely notification of the availability of the process.

In addition the buyer could assert the presumption if he were dissatisfied with the decision of the dispute resolution

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process or if the warrantor failed to fulfill promptly the terms of that decision.

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6. Manufacturers' dispute resolution processes

Ford, Chrysler, General Motors all oppose the bill and state that consumer problems are being handled by their own appeal procedures.

(a) Ford

Ford has an appeal board composed of two dealers and three consumer representatives. A consumer with a service problem must first go to the dealer, and then contact the Ford Motor Company. If the problem is not resolved, he makes his case in writing to the appeals board. A decision of the board is binding on the dealer and on Ford, but not on the consumer.

(b) Chrysler

Chrysler has arbitration boards covering all 50 states. The boards are composed of a mechanic, a consumer advocate, a member of the general public, a dealer, and a Chrysler employee, but only the first three vote on decisions. The decisions are binding on Chrysler and the dealer, but not on the consumer.

(c) General Motors

General Motors has had a third-party arbitration and mediation program through the Better Business Bureau in the Bay Area

(More)

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LEGISLATIVE INTENT SERVICE



since 1979. It has heard 383 complaints, and GM has bought 6 cars. The same procedure is being established in Los Angeles, Sacramento, and Fresno.

The Chrysler program may meet all of the standards for a dispute resolution process set out in this bill, but the programs of Ford and GM would apparently not.

7. Same non-conformity

The bill would define "reasonable number" as four attempts to repair the "same non-conformity" or defect.

Ford Motor Company proposed last year that the term "same non-conformity" be defined as a non-conformity caused by the failure of the same part. Ford argued that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. However, an inability to start because of a defective starter and a similar failure from a defective battery would not be considered to be the same non-conformity under either Ford's warranty or the Song-Beverly Act.

Proponents state that a more accurate example would be a defective transmission which could result from the failure of one of a number of transmission parts. They say that four attempts to produce a working transmission should be the limit of reasonableness, regardless of how many transmission parts were defective.

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8. Technical amendment

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On page , line , strike out "required" and  
insert: defined

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LEGISLATIVE INTENT SERVICE



SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 1787 (Tanner)  
As amended July 7  
Civil Code  
RT

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MOTOR VEHICLE WARRANTIES  
-REPLACEMENT OR REFUND-

HISTORY

Source: Author

Prior Legislation: AB 2705 (1980) - held in this  
Committee

Support: Los Angeles City Attorney; KPIX; KABC; Long Beach Independent Press-Telegram; Santa Barbara News Press; State Consumer Advisory Council; Department of Consumer Affairs; California Consumer Affairs Association; Cal-Pirg San Diego; National Council of Senior Citizens; Motor Voters, San Diego; AFL-CIO, State Federation; State Building and Construction Trades Council of California; United Steelworkers of America; Baldwin Park Chamber of Commerce; Santa Cruz County District Attorney; Consumer Union, San Francisco; San Francisco Consumer Action; County of Los Angeles, Department of Consumer Affairs; California Federation of Women's Clubs, Orange District; Consumer Aid of Shasta County; Colusa County Board of Supervisors; Stanislaus County, Office of Consumer Affairs; Los Angeles Private Investigation & Patrol Service; California Teamsters Public Affairs Council; Center for Auto Safety; Chico Consumer Protection Agency; Lemon-Aid, San Diego; Consumer Federation of California; Legal Aid, San Diego; Consumer Federation of California; Legal Aid Society of San Mateo County; Consumer Coalition

LEGISLATIVE INTENT SERVICE (800) 666-1917



(More)

AB 1787 (Tanner)  
Page Two

A  
B

Opposition: Ford; Chrysler; General Motors; California  
Auto Dealers Ass'n.; California Manu-  
facturers Ass'n.; Motor Vehicles  
Manufacturers Ass'n.; America Honda Motor  
Co.; Calif. Conference of Machinists

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Assembly floor vote: Ayes 48 - Noes 22.

(800) 666-1917

KEY ISSUE

SHOULD THERE BE A PRESUMPTION THAT A NEW MOTOR VEHICLE WHICH HAS BEEN REPAIRED UNDER AN EXPRESS WARRANTY FOUR OR MORE TIMES FOR THE SAME DEFECT OR WHICH HAS BEEN OUT OF SERVICE FOR WARRANTY REPAIR MORE THAN 20 SHOP DAYS SHOULD BE REPLACED OR THE PURCHASER REIMBURSED BY THE MANUFACTURER?

LEGISLATIVE INTENT SERVICE

PURPOSE

The Song-Beverly Consumer Warranty Act provides a mechanism whereby a consumer can enforce the terms of an express (written) warranty issued by a manufacturer. The Act provides that a manufacturer who is unable to service or repair goods to conform to his express warranty after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.



This bill would create a rebuttable presumption that a reasonable number of attempts have been undertaken if the same defect had been subject to repair four or more times by the manufacturer, or if the vehicle had been out of service for repair for more than 20 shop days since its delivery to the buyer.

The purpose of the bill is to provide an effective remedy for the automobile buyer who purchases a "lemon."

(More)



COMMENT

1. Limited by the Song-Beverly Act

This bill would amend the Song-Beverly Consumer Warranty Act, and would apply only to those transactions covered by the Act.

(a) Only applicable to consumer goods

The Song-Beverly Act applies only to "consumer goods," defined as a product "used or bought for use primarily for personal, family, or household purposes...."

This bill would apply to any "new motor vehicle" - defined in Veh. C. Sec. 415 as any vehicle which is self-propelled - but only if used or bought for use primarily for personal, family, or household purposes. Thus, vehicles used for commercial purposes would not be subject to this bill.

(b) Only applicable to terms of express warranty

The purpose of the Song-Beverly Act is to provide a consumer with a means of enforcing the terms of the manufacturer's own warranty. Nothing which is not covered by that warranty is subject to the provisions of the Act.

Thus, this bill would apply only to those vehicles or parts of vehicles covered by the manufacturer's warranty. If the vehicle was sold "as is," this bill would not apply to that vehicle. If the vehicle was warrantied, but the defect arose in a part of the vehicle not covered by the warranty, the bill would not apply.

(More)



2. Nature of remedy

(a) Rebuttable presumption of reasonable number

The Song-Beverly Act imposes the duty of replacement or reimbursement on the warrantor who fails to repair the defect in the goods as promised by his warranty after a "reasonable number of attempts."

This bill would create a rebuttable presumption that a reasonable number of attempts for a new motor vehicle would be four or twenty shop days. The presumption could be overcome by a showing on the part of the warrantor that four attempts or twenty days were not reasonable in that particular case.

(b) Replacement or reimbursement

Under the Song-Beverly Act if the warrantor fails to repair the goods after a reasonable number of attempts, he shall either replace the goods or reimburse the buyer in an amount "equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer" prior to the discovery of the defect.

(c) Enforcement by litigation

The Song-Beverly Act is not enforced by any governmental agency. If a warrantor fails to meet the terms of the Act, the consumer's only remedy is to go to court.

3. Need for bill

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have

(More)



made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

4. Same non-conformity

The bill would define "reasonable number" as four attempts to repair the "same non-conformity" or defect.

Ford Motor Company proposes that the term "same non-conformity" be defined as a non-conformity caused by the failure of the same part. Ford argues that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. In Ford's example, however, an inability to start because of a defective starter and a similar failure from a defective battery could not be considered the same non-conformity.

Proponents state that a more accurate example would be a defective transmission which could result from the failure of one of a number of transmission parts. They say that four attempts to produce a working transmission should be the limit of reasonableness, regardless of how many transmission parts were defective.



5. Non-conformity with Song-Beverly

The bill is out of conformity with the Song-Beverly Act in two minor respects.

(a) Period of reasonable time

Other parts of the Song-Beverly Act define "reasonable time" as 30 calendar days. This bill, on the other hand, uses a standard of 20 days during which the service facility is open for business.

(b) Delay beyond the control of the warrantor

Where the Act refers to the 30 day period, it provides that delay caused by conditions beyond the control of the warrantor shall extend the period. This bill does not contain such a provision.

SHOULD NOT THIS BILL INCLUDE SUCH A PROVISION?

6. Manufacturer's appeal boards

Ford, Chrysler, General Motors all oppose the bill and state that consumer problems are being handled by their own appeal procedures.

(a) Ford

Ford has an appeal board composed of two dealers and three consumer representatives. A consumer with a service problem must first go to the dealer, and then contact with Ford Motor Company. If the problem is not resolved, he makes his case in writing to the appeals board. A decision of the board is binding on the dealer and on Ford, but not on the consumer.



(b) Chrysler

Cherysler has arbitration boards covering all 50 states. The boards are composed of a mechanic, a consumer advocate, a member of the general public, a dealer, and a Chrysler employee, but only the first three vote on decisions. The decisions are binding on Chrysler and the dealer, but not on the consumer.

(c) General Motors

General Motors has had a third-party arbitration and mediation program through the Better Business Bureau in the Bay Area since 1979. It has heard 383 complaints, and GM has brought 6 cars. The same procedure is being established in Los Angeles, Sacramento, and Fresno.

7. Technical amendment

On page 4, line 10, strike out "shop" and insert:  
"facility"

\*\*\*\*\*



NEWS FROM THE



WORLD OF FORD

RELEASE ON INQUIRY

Following is a statement by Richard L. Dugally, western regional ~~manager~~, Governmental Affairs, Ford Motor Company:

Ford Motor Company strongly opposes passage of AB 1787 relating to ~~new~~ motor vehicle warranties. There are sufficient avenues of recourse now available to consumers and numerous governmental organizations which assure customer satisfaction without the necessity of involving the courts in each repair dispute.

We believe this proposed legislation will greatly increase the number of frivolous and unmeritorious lawsuits filed against motor vehicle ~~manufacturers~~. Inevitably, an increased dependence upon the over-burdened court system will lead to increased costs for Ford, and, subsequently its customers.

Ford and its dealers have taken great strides in establishing a speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts.

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LIS-7

SP-1



LEGISLATIVE INTENT SERVICE (800) 666-1917



Regional Governmental Affairs Office  
Ford Motor Company

16160 - 175 L Street  
Camarillo, California 95814  
Telephone (805) 442-0111

AB 1787 - Lemon Car Bill.

- 1) No exemption for commercial or non-personal/family use. What about police cars, taxis, etc.
- 2) No provisions to reimburse manufacturer if he has to buy the car back after say 10,000 miles of useage.
- 3) On the 20 day section, no provision for delays caused by acts of God, strikes, etc.
- 4) No provision covering abuse or modification by the owner. Four-wheel drives are an example.
- 5) No objective standard outlined in the bill to determine if it's a lemon.
- ~~6) Section 2 should be the same defect. It doesn't say that.~~
- 6) Defects are not aimed at the critical driving operations of the vehicle. What if the radio or speakers are the source of problems. Or the inside dome light.
- ~~8) Why don't we get attempts to repair as the dealer does?~~

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-2



# MANUFACTURERS ASSOCIATION INDUSTRY ISSUES

Spokesman for California Industry

SUBJECT: AB 1787 (Tanner) POSITION: OPPOSE  
Automobile Warranties

SUMMARY:

1. Adds to the Civil Code procedures for determining warranties for new automobiles.
2. Declares a warranty in nonconformity if the car has been:
  - a. repaired 4 or more times by the manufacturer or its agents.
  - b. out of service by reason of repair for a cumulative total of 20 days or more.

COMMENTS:

1. Would result in increased owner-manufacturer aggravation and additional litigation.
2. New car buyers are adequately protected by existing manufacturers warranties and current California law.
3. American auto manufacturers have established consumer appeals boards whose decisions are binding on both makers and dealers.
4. Adds more state employees to enforce the new laws. Another layer of government regulation is unnecessary.
5. Would set a dangerous precedent that could be applied to other products in the future.

CONTACT: JESS BUTCHER

4-22-81 (81-4)  
(Revised 5-13-81)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-3





# A. E. Davis and Company

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

April 27, 1981

The Honorable Sally Tanner  
Chairperson  
Assembly Consumer Protection & Toxic Materials Committee  
State Capitol - Room 2016  
Sacramento, California 95814

Dear Mrs. Tanner:

This letter is to inform you that Chrysler Corporation is opposed to your bill, AB 1787, that would amend the Song-Beverly Warranty Act.

This bill will place an undue burden of time and expense on the aggrieved purchaser by forcing him or her to go to court to prove that the vehicle's nonconformity fits the language of the amendment.

Chrysler has a better idea that doesn't cost the purchaser a cent, not even a postage stamp.

Chrysler has established fifty-four Customer Satisfaction Arbitration Boards (CSAB) covering all 50 states. The purpose is to aid a dissatisfied purchaser to correct a problem that keeps the vehicle from being in conformance with the terms of the express warranty. The features of the CSAB program are -

1. The dealer offers the dissatisfied purchaser a brochure explaining the program which also includes an Appeal form to be filled out by the purchaser and a pre-stamped envelope so he can mail it to the nearest CSAB office.
2. The Board consists of five members - a certified auto mechanic, a consumer advocate, a general public member, a dealer representative, and a Chrysler Corporation employee. After review of each complaint the final decision can be voted on only by the mechanic, consumer advocate and the public member. The decision has ranged from denying that the purchaser has a valid case to ordering Chrysler Corporation to replace the vehicle with a new one. The final decision is binding on both Chrysler and the dealer, but not on the purchaser who has the option of going to court.
3. If the customer is requested to return the nonconforming vehicle to a dealer, he is provided a loan car free of charge.

SP-4



The Honorable Sally Tanner

-2-

In summary, Mrs. Tanner, we believe this CSAB program is a far better, and certainly less costly, way to get a properly running vehicle back in the hands of its owner than by the procedures facing him in your bill.

We, therefore, respectfully oppose AB 1787.

Sincerely yours,



A. E. Davis

cc: To All Committee Members



SP-55

CALIFORNIA ASSEMBLY BILL 1787

\*This legislation is not needed since legal remedies are now available to a consumer:

Current California law provides that a consumer can have a manufacturer replace goods which do not conform to the manufacturer's express warranty, or be reimbursed for those goods by the manufacturer, after a "reasonable" number of repair attempts. In addition, the Magnuson-Moss Act provides a cause of action under federal law for breach of warranty obligations.

\*Assembly Bill 1787 requires the manufacturer to provide a consumer with a replacement vehicle or a refund for an unrepaired vehicle when, in fact, it is the dealer's primary responsibility to repair vehicles:

Assembly Bill 1787 amends current California law to establish a presumption, applicable only to motor vehicles, that a "reasonable" number of repair attempts is four (3 for dealer, 1 for manufacturer) to remedy the same nonconformity, or a nonconformity where the vehicle is out of service for a cumulative total of more than twenty days for repair by a dealer. When either of these thresholds is reached, the manufacturer must replace the nonconforming vehicle or reimburse its owner for its purchase price.

It is unreasonable to assume, as this legislation does, that the manufacturer has direct control over its dealers' service operations and employees and, therefore, should bear the burden of the dealer's failure to cure a nonconformity within the specified time limits. In fact, the motor vehicle dealer is an independent businessman operating his own business with his own capital pursuant to a sales and service agreement with the manufacturer.

\*This bill possibly imposes an additional cost on not only the manufacturer but, also, on the vast majority of consumers who will never have the opportunity or need to avail themselves of the remedies provided in this bill:

SP-6



It is difficult to justify the additional cost which may result from a requirement that a consumer be provided with a replacement vehicle or a refund if repair cannot be successfully performed within the arbitrary limit of three or four attempts or twenty days. This legislation could operate to the detriment of the vast majority of consumers by increasing the cost of a motor vehicle without providing any significant benefit in return.

**\*Intense competition in the motor vehicle manufacturing industry insures high quality vehicles which conform to manufacturers' warranties:**

In today's market, domestic motor vehicle manufacturers must compete, not only with other domestic manufacturers, but with foreign manufacturers as well. Loyal, satisfied customers are essential for a motor vehicle manufacturer's successful competition. Motor vehicle manufacturers recognize they must provide customers with reliable, high quality vehicles which conform to their warranties to compete successfully for customers in the market and to retain the loyalty of previous customers.

# # #



May 5, 1981

AB 1787 (Tanner).

This "lemon law" bill simply provides that a new motor vehicle must be replaced or the consumer reimbursed if:

- a) the same nonconformity has not been repaired 4 or more attempts, or
- b) the vehicle has been out of service for a cumulative total of more than 20 days.

The consumers look upon this bill as a way to exert leverage upon the manufacturers and car dealers to resolve any dissatisfaction with a new car.

The dealers and manufacturers are very concerned with resolving problems relating to "lemon" cars and all have established some kind of a third party arbitration program as the most expeditious and fair solution. The dealers have a program called "Autocap" which receives heavy financial support from the dealer organizations. GM employs a third party arbitration and mediation program through the Better Business Bureau. This program was started in the San Francisco Bay Area in February 1979. To date 383 complaints have been heard, 75% of the complaints were resolved through the mediation process -- arbitration was not necessary. Of the 25% that went to binding arbitration, about 2/3's supported GM's position in some fashion and 1/3 the customers position. Since February 1979 GM has bought back 6 cars. The average time to get a decision is 50 days from the time the complaint is filed. A decision is rendered within 10 days following an arbitration hearing. The same procedure is being established in Los Angeles, Sacramento and Fresno this month. Volkswagen of America uses a similar Better Business Bureau arbitration procedure.

AB 1787 is a hoax because it won't do what the consumer groups think it will do, namely, resolve their new car problem in an expeditious manner. Quite the opposite -- it will result in increased litigation and drawn-out court cases which will cost the consumer heavily in time and money.

IF AB 1787 were the current law and a consumer told a dealer that he wanted a new car or his purchase price refunded because the car had not been fixed in 4 attempts, the dealer would simply say "take me to court". There would be no reason to arbitrate anything with a law like this. If you happen to be in Los Angeles, the Superior Court has a backlog of 76,000 cases and it takes 53 months to get to court. Compare that with the 50 day average for the GM/Better Business Bureau arbitration plan. The average time in California to go to Municipal Court is 1 year. If the consumer finally gets to court and is awarded a settlement, his attorney will receive 1/3.

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By comparison, the arbitration programs are free to the consumer. His only cost would be for his attorney if he chooses to employ one. For its part GM does not use attorneys in its Third Party Arbitration Program. GM has pre-committed to arbitrate any instance of a dispute with a customer with respect to the application, administration or interpretation of its new vehicle warranty. In addition, it will arbitrate any instance of a product dispute beyond the warranty period regardless of time or mileage.

It will not arbitrate any case involving:

1. Allegation of fraud
2. Complaints involving damage or personal injury in which there are product liability issues or insurance claims
3. Alleged violations of law.

In addition to consumer groups the author stated in her committee that AB 1787 is supported by the Trial Lawyers. This isn't too surprising as it appears the trial lawyers see the potential for more court cases should AB 1787 become law. The bill is opposed by the New Car Dealers, General Motors Corporation, Ford Motor Company, Chrysler Corporation and Volkswagen of America, all of whom have recognized the competitive necessity to resolve consumer complaints as expeditiously and fairly as possible at no cost to the consumer. The California Manufacturers Association is also opposed to AB 1787.





FORD MOTOR CO.  
SACRAMENTO

MAY 16 1981

GOVERNMENTAL AFFAIRS

Ford Parts and Service Division

May 11, 1981

Inter Office

Mr. R. L. Dugally

cc: Mr. H. W. Masterson  
Mr. N. A. Smith

Subject: Floor Statement Input in Debate of California A.B. 1787

Below are some general observations you may wish to make known to  
as requested in your May 4 note to H. W. Masterson.

Complex vehicle repairs, undertaken on the basis of unreliable  
symptom description, leads to problem isolation and fix by the  
process of elimination. Vehicle manufacturers have been unable  
to train away the diagnostic weaknesses that makes this system  
necessary due to ever changing vehicle technology.

Numerical limitations on attempted repairs could have at least  
two adverse results:

1. Extensive over-repair which likely would lead to increased  
costs, thereby decreasing manufacturers' interest in extending  
warranties. The consumer loses.
2. Harsher interpretation of "commercially acceptable" definition  
related to marginal problems. Where we now try to repair  
beyond "commercially acceptable" to achieve owner satisfaction,  
we would likely desist since attempting a fix would be admitting  
a problem.

A.B. 1787 would increase litigation instead of improving the accuracy  
of repairs. It is punitive rather than corrective.

While not a Ford issue, the 30 day time factor for repair completion  
would seem to be anti-competitive in that smaller manufacturers may  
not be able to support the network of parts depots required to insure  
the required parts availability.

I hope these points are helpful to you. Please call if you have any questions  
on extension 44291.

*[Signature]*  
R. Reed

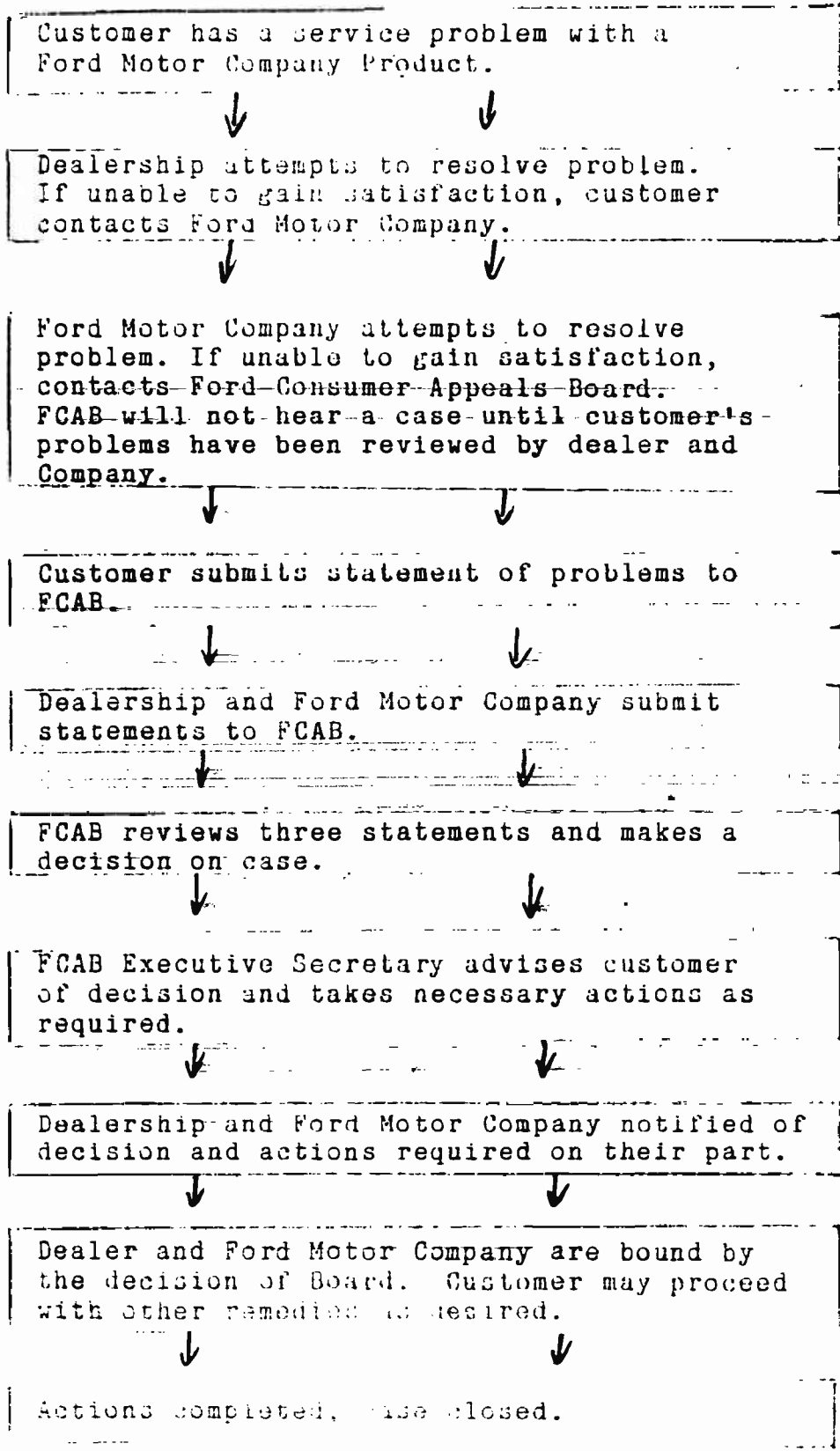
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FORD CONSUMER APPEALS BOARD

AVAILABLE



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SP-11



# MANUFACTURERS ASSOCIATION INDUSTRY ISSUES

Spokesman for California Industry

ASSEMBLY FLOOR - MAY 14

GOVERNMENTAL AFFAIRS

SUBJECT: AB 1787 (Tanner)  
Automobile Warranties

POSITION: OPPOSE

SUMMARY:

1. Adds to the Civil Code procedures for determining warranties for new automobiles.
2. Declares a warranty in nonconformity if the car has been:
  - a. repaired 4 or more times by the manufacturer or its agents.
  - b. out of service by reason of repair for a cumulative total of 20 days or more.

COMMENTS:

1. Would result in increased owner-manufacturer aggravation and additional litigation.
2. New car buyers are adequately protected by existing manufacturers warranties and current California law.
3. American auto manufacturers have established consumer appeals boards whose decisions are binding on both makers and dealers.
4. Adds more state employees to enforce the new laws. Another layer of government regulation is unnecessary.
5. Would set a dangerous precedent that could be applied to other products in the future.

CONTACT: JESS BUTCHER

4-22-81 (81-4)  
(Revised 5-13-81)

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# INDUSTRY INSIGHTS

Refunds, Returns,  
Exchanges Here!



The California Legislature is currently considering AB 1787 by Assemblywoman Sally Tanner. The bill clarifies the California Civil Code in determining warranty responsibilities for automobile manufacturers.

Under the bill, a warranty is declared to be in nonconformity if the car has been repaired four or more times by the manufacturer or its agents, or has been out of service for repairs for 20 days or more. While this sounds like a good consumer bill, a thoughtful evaluation of the measure reveals that it will increase aggravation between the buyer and the manufacturer and result in additional litigation.

The sad part about this situation is that American auto manufacturers have been making great strides in consumer relations by establishing consumer appeals boards whose decisions are binding on both makers and dealers. The dangerous part is the bill would set a terrible precedent that could be applied to other products in the future. It doesn't take much imagination to figure out the number of state employees that could be added to enforce new laws providing another layer of government regulation.

Historically, American manufacturers have provided adequate warranties and the consumer-seller relationship has been completed without government regulation. Adding a third-party bureaucracy can lead only to further government empire-building.

A similar bill by Assemblywoman Tanner was defeated in the California Senate last year. AB 1787 deserves the same fate. —Jess J. Butcher

## PG&E Requests \$325 Million Increase

PG&E has filed an application (A. 60616) for a \$325.7 million increase in electric rates to cover energy costs from Aug. 1, 1981 to Nov. 30. In its application, the utility asked that the increase go into effect Aug. 1, with a four month amortization period. The total increase requested is 27.4%, with the residential class getting a 10.4% increase and large light and power receiving a 38.4% increase.

The rate design proposed by PG&E in this case is essentially the same as the last ECAID case (see Sacramento Report, Feb. 13). The utility is asking for non-residential rates to be increased to 20.13¢ per kilowatt hour, with a 10¢ per kilowatt hour increase for large power to be increased to 17¢ per kilowatt

PG&E believes that the Tier III rate should not exceed the residential marginal cost and uses the marginal cost as a cap. The rest of the increase was spread to lifeline and Tier II to maintain a 38% differential between tiers. It has been this association's position that there is nothing magic about a 38% differential, and that if the top tier is held at the marginal rate, then the differential should be transferred to the lower tiers.

The utility is asking for a 10¢ per kilowatt hour increase for non-residential rates to be increased to 20.13¢ per kilowatt hour, with a 10¢ per kilowatt hour increase for large power to be increased to 17¢ per kilowatt

# TOXICS UPDATE

Contrary to what was reported in our article on *Direction 81* last week, an industry-backed siting bill has been introduced. The bill, SB 1049, Montoya, D-Whittier, would authorize the Department of Health Services to issue disposal site permits and would preempt local governments from controlling hazardous waste facilities. The bill has not been heard yet by its policy committee, Senate Health & Welfare, and automatically becomes a two year bill.

Three superfund bills await action by their respective fiscal committees. SB 788, Presley, D-Riverside, the administration's bill, was put over by the Senate Finance Committee for two weeks. SB 618, Carpenter, D-Santa Ana, the industry-sponsored bill, has not yet been scheduled for hearing, but must be heard by the Senate Finance Committee. The compromise bill sponsored by the Assembly leadership, AB 69, Tanner, D-El Monte, awaits a hearing in the Assembly Ways & Means Committee.

AB 1543 (Tanner), which creates a hazardous waste siting council and makes major changes in the present hazardous waste management system has not been scheduled for hearing yet in the Assembly Ways & Means Committee. This association is working with the author to develop suitable amendments to the bill.



USPS 782 400

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John M. Heldack Chairman of the Board  
Robert T. Monagan, President  
Jeanne Mann, Editor  
Renee Kutzer, Assistant Editor

The California Manufacturers Association is a nonprofit organization representing the interests of California manufacturers and processors before the Legislature and state regulatory agencies.

The California Manufacturers Association is a nonprofit organization representing the interests of California manufacturers and processors before the Legislature and state regulatory agencies.

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June 12, 1981 662

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BACKGROUND INFORMATION

AB 1782 (Tanner)

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.

NO SPONSOR - The bill has been introduced as a result of the author's personal interest & commitment

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

See attached

(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 2705 (Tanner) - 1980 - was similar in intent, but significantly more

2. <sup>Comprehensive</sup> Purpose

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

Current law provides for a refund or replacement of a warranted good if it is not repaired in a "reasonable number" of repair attempts. The bill "clarifies" "reasonable" to make the refund/replacement remedy one that can actually be used.

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 - for more info pls contact John Hamstra - 50991

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

Note The Assembly Comm on Labor, Employment & SP 14 Consumer Affairs conducted a two day hearing in San Diego on this bill 1979 -

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**CALIFORNIA ADVOCATES, INC.**

Park Executive Bldg., 925 L Street, Suite 380, Sacramento, CA 95814 (916) 441-5050

**FORD MOTOR CO.**  
SACRAMENTO

UII - 1981

GOVERNMENTAL AFFAIRS

June 1, 1981

Members, California State Assembly

Subject: AB 1787 (Tanner) - New Motor Vehicle Warranties

The California Automobile Dealers Association is opposed to AB 1787 (Tanner), the "lemon law" bill. On behalf of two thousand franchised new car dealer members, our reasons for opposing this bill are as follows:

1. The automobile industry has established a variety of workable programs for settling consumer complaints;
2. AB 1787 would create disputes rather than resolve them;
3. Additional litigation undoubtedly would ensue;
4. The price of new vehicles eventually would increase;
5. Existing law provides sufficient remedy to consumers, particularly in light of last year's statutory requirement for providing notice of warranty rights to the customer. (AB 2263, Civil Code 1793.1);
6. The number of vehicles which cannot be corrected to the customer's satisfaction is very small, given the total volume of retail sales in California each year.

We believe that enactment of AB 1787 would be adverse to the consumer's interests. It would encourage litigation rather than negotiation or arbitration in attempted settlement of such disputes.

Sincerely,

Robert J. Beckus  
Robert J. Beckus

Loren V. Smith  
Loren V. Smith

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LEGISLATIVE INTENT SERVICE



OFFICE OF  
**CITY ATTORNEY**  
CITY HALL EAST  
LOS ANGELES, CALIFORNIA 90012



**BURT PINES**  
CITY ATTORNEY

June 24, 1981

The Honorable Omer Rains  
Chairman, Senate Judiciary Committee  
State Capitol  
Sacramento, California 95814

Re: AB 1787 (Tanner)

Dear Omer:

The purpose of this letter is to urge your Committee to support AB 1787 which strengthens existing warranty law regarding new automobiles. This bill, which has become known as the "Lemon Bill," was introduced by Assemblywoman Sally Tanner in response to complaints from consumers who have experienced serious problems with defective new cars. The City Attorney's Office has also received many complaints about new cars with major defects from people who have spent literally scores of hours and hundreds of dollars attempting to get their cars repaired.

Current law entitles a consumer to a full refund or replacement of a new motor vehicle if a defect in the car is not fixed after a "reasonable" number of repair attempts. AB 1787 simply specifies that "reasonable" means four repair attempts or 20 days out of service.

By clarifying the meaning of the law, AB 1787 would provide both consumers and manufacturers with a clear standard for new car warranties and reduce the area of dispute. In addition, the bill would assist consumers to obtain fair redress for defective new cars that are not properly repaired.

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The Honorable Omer Rains  
Page 2.

For these reasons, I hope AB 1787 will receive your  
vote when it is heard by the Senate Judiciary Committee.

Sincerely yours,



BURT PINES  
City Attorney

BP:ae

cc: Members, Senate Judiciary Committee  
Assemblywoman Sally Tanner

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Regional Governmental Affairs Office  
Ford Motor Company

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

June 30, 1981

Honorable Sally Tanner  
Member of the Assembly  
State Capitol - Room 2016  
Sacramento, California 95814

Dear Assemblywoman Tanner:

Attached is a current news release on the progress and operation of the Ford Consumer Appeals Boards throughout the country. I thought you might find this of interest in connection with your Assembly Bill 1787.

Also attached is a story in today's Sacramento Bee regarding Ford's test program which will guarantee lifetime warranty on car repairs. The program will start July 1, 1981 at only three dealerships in the Chattanooga area, and obviously under carefully limited conditions; but at least it's a start in the right direction.

Best personal regards.

Sincerely,

RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

cc: Jim Austin  
Al Davis  
Lee Ridgeway  
Loren Smith

Attachments

bcc: Mr. Richard Thomson ✓

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LEGISLATIVE INTENT SERVICE



NEWS FROM THE



FORD MOTOR CO.  
SACRAMENTO  
WORLD OF FORD  
JUN 29 1981

GOVERNMENTAL AFFAIRS  
IMMEDIATE RELEASE

A consumer-appeals program established by Ford Motor Company in 1977 is proving decisively that customers have a strong voice when it comes to resolving automotive product performance or service disputes.

The first Ford Consumers Appeals Board was established in North Carolina in September, 1977. Since then, six other boards have been set up in major population areas throughout the country.

The success of the boards can be illustrated by the number of customers who have called on them for assistance in resolving disputes with dealerships.

In 1980, the seven boards completed action on 1,938 cases -- bringing to 3,346 the total number of decisions since the consumer appeals board program began. The totals are significant considering that four of the boards have been operating only since mid-1979.

Even more significant is the fact that in addition to the 1,938 cases reviewed by the boards in 1980, another 419 cases submitted for board consideration were resolved by the customer, company and dealer prior to review by the boards and eliminated the need for board action.

"The very existence of the boards has encouraged dealers and Ford service representatives to be more sensitive to service disputes and resolve them before they ever reach the board," said M. A. Smith, manager, Owner Relations and Service Development Office, Ford Parts and Service Division. "The boards give customers clout and constantly remind dealers and Ford representatives of the importance of resolving service-related disputes locally."

-more-

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"In my opinion, our customers are happier if their complaints can be resolved quickly and efficiently by their local dealer. If that isn't possible, our customers may have a case reviewed before the third-party panel without initiating costly and time-consuming court action and without going through a lot of red tape."

The Ford Consumer Appeals Boards are composed of five voluntary members who include three consumer representatives, a Ford dealer and Lincoln-Mercury dealer. All dealers in board locations have agreed to abide by the board's decisions, which are reached by a simple majority vote. The decisions are based on written statements by all parties concerned and are binding on the dealer and Ford Motor Company, but not on the customer.

The boards consider service and product related cases only but will not handle cases in litigation, those involving sales or delivery problems, personal injury, property damage or claims for consequential damage.

"Eligible cases may involve any vehicle produced by Ford Motor Company regardless of age or mileage," Mr. Smith noted.

Ford Consumer Appeals Boards are located in Bellevue, Wash., serving Washington and Oregon; Milpitas, Calif., serving northern California, and Pico Rivera, Calif., serving southern California; Merrifield, Va., serving Metro Washington, D.C., Maryland, and Virginia; South Hackensack, N.J., serving New Jersey; and Charlotte, N.C., serving customers in North and South Carolina.

# # #

6/5/81



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- Q. What's the purpose of the Ford Consumer Appeals Boards?
- A. The Ford Consumer Appeals Board concept is designed to supplement the company's other complaint-handling procedures. The purpose of the boards is increased customer satisfaction--the satisfaction of knowing a product performance or service complaint will be heard by an impartial board whose members are independent of Ford Motor Company.
- Q. How do the boards function?
- A. Each board has a voluntary panel of five members, including three consumer representatives, a Ford dealer and a Lincoln-Mercury dealer. The boards review cases monthly and reach decisions by a simple majority vote. Decisions of the boards are binding on the company and its dealers, but not on the customer who is free to pursue other avenues of appeal.
- Q. How can a customer contact the board?
- A. Through a toll-free telephone number (800-241-3450) or by mail to the address listed for the board serving them.
- Q. What happens when a customer contacts the board?
- A. If the case appears to qualify, the owner is sent a one-page form to document pertinent information regarding the nature of the complaint. The customer completes the form and mails it to a special P.O. Box administered by the Ford Parts and Service District Office. Upon receipt of the customer's statement, it is screened to insure that it qualifies. Then an acknowledgement postcard is sent to the customer telling him that the dealer or a factory representative may contact him in a further attempt to resolve his complaint.



The customer's dealer receives a similar form so that the dealer's version of the problem can be obtained. At the monthly board meetings, the board reviews the statements and supporting evidence for each case and, if sufficient information is presented, votes on a decision. If the ruling is against the dealer and/or Ford, the remedy is initiated within 30 days.

Q. Do the boards usually side with the company?

A. No. The boards have not hesitated to recommend actions which favor customers. These actions have ranged from simple service corrections costing only a few dollars to decisions to replace vehicles.

Q. What kind of cases do the boards consider?

A. The boards deal with product performance - service-related cases only and will not handle cases in litigation or those involving sales or delivery problems, personal injury or property damage, or claims for consequential damages.

Q. What benefits does the company get from the consumer appeals boards?

A. As self-regulating mechanisms, the boards help the company and its dealers become more closely attuned to the needs of their customers. Their very existence means that our dealers and our own personnel are perceived as taking the extra steps required to resolve issues to the satisfaction of customers before they ever get to the boards for a decision.

Q. Should a customer go directly to a consumer appeal board if he has a service problem?

A. If a customer experiences a service problem, he should first contact his dealer.



Lincoln-Mercury vehicle, he first should talk to the dealer. In most instances, the dealer is eager to resolve a service complaint to help preserve a customer's good will. If the problem is not resolved satisfactorily, the customer should then contact the Ford Parts and Service District Office serving his area to obtain company assistance. If he still remains dissatisfied, then he may contact the Ford Consumer Appeals Board.

Q. Have Ford Consumer Appeals Board decisions generally been more favorable to the customer or to the company and dealer?

A. Inasmuch as a case has already been reviewed several times by the dealer and by Ford Motor Company before it reaches the board, the board, more often than not, finds that the case was properly handled before it reached the board.

Q. Are board members paid?

A. No. We do, however, reimburse them for travel expenses, long distance telephone calls, or any other expenses they incur directly related to participating in the board meeting.

Q. What happens if a board member cannot attend a meeting for any reason?

A. All boards have alternate members who can fill in when a regular member is unable to attend.

Q. How many cases are handled by the board each year?

A. The number varies, but it is approximately 100 cases per meeting.



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- Q. Can a customer present his or her case in person?
- A. As an established operating procedure, neither customers nor dealers present their cases to the boards in person. In exceptional situations and if they desire, however, boards may ask a customer to present his case in person.
- Q. How does a customer present his case?
- A. A written statement expressing his complaint, actions taken to date and what he expects is submitted by the customer along with any supporting documents such as copies of repair orders, repair estimates, previous letters and the like.
- Q. How long does it take for a case to be brought before the board?
- A. It has averaged about 37 working days from the time the customer returns the completed statement until the board, which meets once a month, reviews the case - obviously much faster than a legal proceeding.
- Q. What happens if a dealer refuses to abide by the FCAB ruling?
- A. Dealers have agreed to bear financial responsibility in cases where the board determined they had been delinquent and this has not been a problem. Ford, however, would stand behind all decisions.
- Q. What are your plans for future expansion to other states?
- A. Various expansion plans are currently under review.
- Q. Where are the boards now located?
- A. Currently there are seven Ford Consumer Appeals Boards serving eight states and the District of Columbia. (See attached statistics for information)



SOUTHERN CALIFORNIA FCAB

Established in July of 1979 as the sixth Ford Consumer Appeals Board.

FCAB Mail Address

P.O. Box A  
Pico Rivera, California 90660

Area served: Southern California

Executive Secretary: W. A. Nolan

**Board Members:**

Howard Board, president, Board Ford, Whittier, Calif.

Helen Sachs, president, Sachs and Sons Lincoln-Mercury, Downey, Calif.

Ronald Melendez, consumer affairs director, County of Orange, Santa Ana, Calif.

Billy Meyers, chairman, Department of Mechanical Technology, Citrus College,  
Azusa, Calif.

Susan Huguenor, deputy city attorney, Consumer Protection Unit, San Diego City  
Attorney's Office, San Diego, Calif.



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NORTHERN CALIFORNIA FCAB

Established in July of 1979 as the seventh Ford Consumer Appeals Board.

FCAB Mail Address

P.O. Box 909  
Milpitas, California 95035

Area covered: Northern California

Executive Secretary: W. J. Boultas

**Board Members:**

Edmund Bartlett, president, Sun Valley Ford, Concord, Calif.

Charles Hilton, president, Town and Country Lincoln-Mercury, Sacramento, Calif.

Don Cosgrove, manager, California State Auto Association, Automotive Technical  
Services, San Francisco, Calif.

David J. Van Edgon, Inspector of Automobile Equipment, State of California --  
Department of General Services, Fleet Administration Division,  
Sacramento, Calif.

Elizabeth Sullivan, member, Consumer Cooperative of Berkeley, Calif.

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SP-26

# Ford testing lifetime warranty

6-30-81 SACTO BEE

A lifetime guarantee on repairs for your car? Impossible? Yes, right now, impossible. But Detroit has been moving in tiny steps in that direction for several years and earlier this month (June), a tentative test program which could transform today's "impossible" into tomorrow's "possible" was announced by Ford Motor Co.

If it works, your savings over a typical 10 years and 100,000 miles of driving could amount to several thousands of dollars. And it might work; for upkeep is becoming relatively less expensive; troubleshooting tools are getting better; makers and dealers appear finally to be approaching agreement on how much a repair should cost, how long it should take and how best to fix what's wrong so it stays fixed.

**REPAIR COSTS** today are 25 percent to 30 percent less than in 1950 and 65 percent to 70 percent less than in 1925. What's more, if you're conservative in your driving and conscientious in your upkeep, today's cars can run 140,000 to 150,000 miles, way above their former top distances.

The auto dealer's slogan, "Pay Now, or Pay Later" is to be taken seriously. Even with cautious car handling and careful upkeep, major breakdowns will cost you rising totals as your car ages.

For a typical compact, average repair costs climb relentlessly from about \$175 annually in your first year (at today's prices and assuming 10,000 miles a year) to nearly \$490 a year in your 10th year of operation. By your fifth year (50,000 miles) your annual upkeep may near \$300 and by your eighth, be close to \$400.



These figures do not take inflation into consideration. (Even with "only" an 8 percent annual inflation rate, your 10th year costs might top \$1,000).

**TO SMOOTH OUT** these often all-at-once big costs, Detroit has long offered a variety of factory, dealer and independent "warranties."

In the early 1960s, Chrysler actually adopted a five-year, 50,000-mile free contract — good even if the car was traded. Within a few years, though, high expenses forced Detroit to end such long-term giveaways, leaving the field to independents which sold upkeep policies through dealerships.

In the late 1970s, domestic makers began selling — as an optional extra — "extended service protection" against maintenance costs. These warranties (usually requiring a lump payment plus a set fee for each repair) typically have a three-year and 36,000- or 50,000-mile maximum, and end if you trade the car.

Now Ford is testing another step: guaranteeing repair work for the life of the car, under carefully limited conditions. The program is being tested at

just three dealerships in the Chattanooga, Tenn., area.

**WORK DONE UNDER** a car's initial (free) warranty is NOT covered. But any upkeep performed under an extended service (optional extra cost) program IS eligible. The guarantee ends if the car is sold or traded, or if repairs are done at a non-Ford dealership or with non-Ford parts.

There are also many "exceptions": parts replaced under scheduled maintenance, such as points, spark plugs, condensers, filters and emissions-control valves. "Exclusions" include: items which normally wear out, such as brake linings, clutch facings, and windshield wiper blades, plus batteries, fluids and, of course, parts damaged by accident or abuse.

While this test is a tiny step forward, basic to any eventual workable warranty is the disparity between what the manufacturer pays a dealer for work done and the higher price the dealer charges a customer for identical repairs. But even here, there's a tinkle bell of progress.

**AS OF JULY 1** (tomorrow), an Idaho law requires automakers to pay dealers at the same rate for warranty repairs that customers must pay if the auto is not under warranty. When makers and dealers agree on costs of repairs, lifetime car warranties will be next.

Manufacturers will have a bigger incentive to make the cars right in the first place; and if the equipment does break, the dealers will have the incentive to fix it right, for the first time, too.

What you and I will save in time alone is mind-boggling. And in dollars . . . And in aggravation. Move on, Detroit.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-271



**NEW MOTOR VEHICLE BOARD**

1401 - 21st Street  
 Suite 407  
 Sacramento, CA 95814  
 (916) 445-1888



**RECEIVED**  
 JUL 14 1981  
**FORD MOTOR CO.**  
 SACRAMENTO

July 10, 1981

NEW MOTOR VEHICLE DEALERS ASSN

JUL 27 1981

GOVERNMENTAL AFFAIRS

Senator Alan Sieroty  
 State Capitol  
 Room 5072  
 Sacramento, CA 95814

Dear Senator Sieroty:

I am a member of the New Motor Vehicle Board of the State of California. In May of 1974, Governor Ronald Reagan appointed me to a four year term. In April of 1978, Governor Edmund G. Brown Jr. reappointed me to another four year term. As a member of the New Motor Vehicle Board for the past seven years, and as a car dealer for the past thirty years, I have spent many hours away from my business, working to insure the motor vehicle industry in the State of California is responsive to the needs of the California consumer.

As a member of the New Motor Vehicle Board, I have been intricately involved in the development of the procedures, policies, and standards which directly relate to the welfare of the California consumer, (which necessarily includes the viability of the California car dealer, who is a valuable economic asset to each community of this state).

While I have never had the opportunity of meeting Assemblywoman Tanner, I share some of her concerns. However, I do not believe AB 1787 will be cost-efficient or an effective remedy to the consumer. Therefore, I am respectfully submitting to you Senator Sieroty my opposition to AB 1787.

First of all, present law offers adequate procedures and protection for the new motor vehicle consumer. Civil Code Section 1793.2 currently provides that after a reasonable number of attempts, a manufacturer "shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer . . .". What constitutes a reasonable number of attempts will vary depending upon the facts of the particular case. I therefore believe the determination of what is a reasonable number of attempts should be left to a case-by-case evaluation.

Secondly, the New Motor Vehicle Board is mandated pursuant to Vehicle Code Section 3050(a) to:

Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative ... submitted by any person ...

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Under this mandate, the Board has developed an efficient and effective consumer complaint program whereby it has resolved thousands of consumer complaint problems without the necessity of formal expensive litigation. The Board's staff both formally and informally are resolving 80% of the consumer complaints which are annually filed with the Board. In addition to the consumer complaint program, the Board has devised a formal "Petition" procedure that may be employed against a motor vehicle licensee, whether it be a manufacturer, distributor, or dealer, for the protection of motor vehicle consumers.

Thirdly, the language of AB 1787 does not indicate what agency or agencies would be responsible for administering the amendments to Civil Code Section 1793.2. It does appear likely an increase in disputes will result from this legislation. The resolution of these disputes will require the involvement of either the judicial system or a state agency. Unfortunately, the judicial system is experiencing significant overload problems which result in delays of many months, if not several years. In addition to significant delays, the consumer would be required to expend their own money on attorney fees and services in order to properly pursue their judicial remedy. In many instances, this alternative will not be available due to expense and delays.

In the event the judicial system is not a viable alternative, the consumer's only other alternative is to look to a state agency to enforce the law. Since the bill does not designate an agency to deal with these problems, the consumer may not have a remedy. I believe, however, in light of the Board's mandate mentioned above, the Board may end up adjudicating claims arising under the proposed law. The costs of such a program, while very speculative at this point, could result in an unreasonable burden being placed on the Board's already scarce resources. For this reason, I must, as a member of the New Motor Vehicle Board, oppose AB 1787.

I realize the Legislature is in recess during the month of July and early August, however, due to the significance of this legislation, I would be more than happy to meet with you in your district or anywhere that would be convenient for you to discuss AB 1787.

Please do not hesitate to call me if I may be of assistance to you in any way. My business phone at Vandenberg Motors is (916) 452-4331, and my home phone is (916) 487-2060.

Very truly yours,

  
JOHN B. VANDENBERG  
Board Member  
New Motor Vehicle Board

cc: Assemblywoman Tanner



SP-271

*FORD GM*  
**FORD MOTOR CO.**  
SACRAMENTO

JUL 16 1981

GOVERNMENTAL AFFAIRS

AB 1787

Page 4 - Line 14

Motor vehicle manufacturers and motor vehicle dealers who offer dispute resolution mechanisms that contain the following criteria shall be exempt:

- 1) Third party mechanism to resolve disputes between the owner and the manufacturer or between the owner and the dealer
- 2) All expenses involved in the administration of the mechanisms to be paid by the manufacturer or the dealer
- 3) Decision of the third party must be binding on at least the manufacturer or dealer.

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LEGISLATIVE INTENT SERVICE



CP-30



Regional Governmental Affairs Office  
Ford Motor Company

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

July 23, 1981

Mr. Richard Thomson  
Chief Counsel  
Senate Judiciary Committee  
State Capitol - Room 2046  
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Per our telephone conversation, attached is the following material on Assembly Bill 1787 (Lemon car bill):

- (1) General Motors statement
- (2) Motor Vehicle Manufacturers Association analysis
- (3) California Manufacturers Association issues paper
- (4) California Manufacturers Association Report editorial
- (5) California Automobile Dealers Association letter
- (6) New Motor Vehicle Board letter
- (7) Ford news release statement of opposition
- (8) Ford brief problem paper
- (9) Ford floor statement input
- (10) Ford chart on resolving customer service problems
- (11) Ford Consumer Appeals Board brochure
- (12) Proposed General Motors amendments

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SP-21

Page Two  
Richard Thomson  
July 23, 1981

Assembly Bill 1787

In addition to this material, there are six serious problem areas that should be dealt with by amendments:

(1) Commercial vehicles (fleet, taxi, police, etc.) should be excluded.

(2) The 20 day provision should be changed to 30 days to conform with existing sections of the law.

(3) The 20 days provision should be extended for reasons beyond the control of the manufacturer or dealer (strikes, acts of God, etc.).

(4) Emission equipment warranties (now required for 50,000 miles or 5 years) should be excluded.


(5) The definition of "same nonconformity" should be narrowed to be for the same "part" (i.e., if car doesn't start easily or at all, it could be several different parts causing the problem). The "same nonconformity" is too vague.

(6) There should be some provision to exclude the buy-back if there has been customer abuse, misuse, modification or alteration.

I appreciate your interest in our analysis of this measure. As soon as I receive our Office of General Counsel's language on proposed amendments, you will receive a copy.

If you need to contact me, please don't hesitate to call me at home: (916) 481-1511. My secretary, Cheryl Ewing, will know where to reach me next week in Atlanta.

Sincerely,



RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

Attachments

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-32



Regional Governmental Affairs Office  
Ford Motor Company

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

July 24, 1981

Mr. Richard Thomson  
Chief Counsel  
Senate Judiciary Committee  
State Capitol - Room 2046  
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Attached are the proposed amendments to Assembly Bill 1787 which we discussed yesterday. These were just received from our Office of General Counsel in Dearborn.

I plan to personally deliver a copy to Assemblywoman Tanner next week in Atlanta and Kathi Hamilton is receiving a copy today. These may not be all of the amendments that we will recommend, as I will just have to wait until our Chief Counsel responsible for warranty legislation returns from vacation.

Thank you for your continued interest.

Sincerely,

RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

cc: Honorable Sally Tanner  
Jim Austin  
Al Davis  
Kathi Hamilton  
Lee Ridgeway  
Loren Smith

Attachments

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-33

JUL 24 1981

GOVERNMENTAL AFFAIRS

R. L. Dugally

Re: California AB 1787

In reviewing California AB 1787, we find that there are several unworkable definitions and overly extensive remedies which should be clarified. Specifically, we believe that there are six basic problems with this legislation which could be remedied through proper language additions.

1. In keeping with the spirit of the Song-Beverly Warranty Act, the bill should clearly exclude commercial vehicles from its coverage. The Song-Beverly Act applies only to consumer goods; however, the proposed legislation is applicable to new vehicles, without defining that term. Accordingly, new vehicles should be defined.

2. The proposed language requires repurchase of a vehicle if it is out of service for 20 days by reason of a non-conformity. This conflicts with the existing Song-Beverly language which provides that a product must be repaired within 30 days. Accordingly, the 20-day provision should be extended to 30 days to conform with the existing law.

3. Similarly, the existing law provides an extension to the 30-day period for delays caused by conditions beyond the control of the manufacturer or his representatives. We believe this similar provision should be added to the proposed new language.

4. As the Song-Beverly Act in general and this proposed addition in particular are intended to apply to the express warranty provided by the manufacturer, there should be a clear exclusion of any statutorily required warranties. To include such warranties in this legislation would potentially conflict with other federal and state laws.

5. The proposed addition refers in several instances to the same non-conformity without defining that term. It is quite conceivable that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. We believe that consistent with the intention of this legislation, the term "same non-conformity" should be defined as a non-conformity caused by a failure of the same part.

6. The new legislation could require the repurchase of a vehicle based upon an inability to repair under the warranty. Certainly, it could not be the legislative intent to cover vehicles the failures on which have been caused directly by the owner. Thus,

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SP-34

the buy-back provision should not be applicable in instances where there has been customer abuse, negligence or modification or alteration to the vehicle.

Accordingly, the proposed additional legislation should be revised to read as follows:

"It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same non-conformity has been subject to repair ~~by the dealer, and the time~~ or more times by the manufacturer, or (2) the vehicle is out of service by reason of a non-conformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 30 days. In computing the 30 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the dealer's repair shop is open for business. The 30 days shall commence on the day when, after the defect is first reported or known, a written estimate of the cost of repairing such defect is first prepared. Delays caused beyond the control of the manufacturer or its representatives shall serve to extend the 30-day requirement.

The foregoing provision shall not be applicable to any statutorily required warranties, or in instances where the vehicle has been subject to <sup>customer</sup> abuse, negligence, or modification or alteration.

For purposes of this section, the following definitions shall apply:

(a) "New vehicle" shall mean only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight that has not been previously titled or registered, has not been substantially used or damaged and that is sold for personal, household or family use.

(b) NOTE: TAPE GARBLED, LANGUAGE WILL BE SUPPLIED NEXT WEEK. *Dyally*

Each of these provisions which have been revised by us should be acceptable to the state legislature.

Stewart M. Weiner  
Senior Attorney





Legislative Intent Service  
758  
AB 1787  
Femon Bill  
Strategic  
Michigan

Dear Sirs:

I cannot imagine that you need to be URGED to pass this bill.

There are thousands of citizens who resist this bill. I am a very small one but the few thousands that see to a common front is not so small.

It is time to use the responsibility of our citizens.

Some citizens, such as ourselves, resist in various ways. It is time to force them to accept their responsibility.

It is time to use our responsibility.

It is time to use our responsibility.

SP 36

LEGISLATIVE INTENT SERVICE (800) 666-1917





California Chamber of Commerce • 1027 10th St. • P.O. Box 1736 • Sacramento, CA 95808 • (916) 444-6670

July 28, 1981

The Honorable Sally Tanner  
California State Assembly  
California State Capitol, Rm. 2016  
Sacramento, California 95814

RE: AB 1787 Warranties, scheduled for  
hearing August 11 before the Senate  
Judiciary Committee

Dear Ms. Tanner:

The California Chamber of Commerce opposes AB 1787 as amended  
July 7, 1981.

We find this legislation adds another layer of regulations that  
could only further complicate and burden the Department of  
Consumer Affairs under the State of California.

We feel that there are adequate remedies available to the  
consumer other than attempting to further legislate warranty  
requirements.

AB 1787 is arbitrary in its designation of the number of times  
the automobile should be repaired and the length of time the  
automobile is out of service.

We are urging the committee members to vote "no" on this legislation.

Sincerely,

Warren J. Hayes, Director  
Consumer Affairs

WJH/pb

cc: Senate Judiciary Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-37

July 31, 1981

AB 1787  
G

SUBJECT: Proposed California "Lemon Law"

CHAIRMAN

N. MELLETT  
SAAB-SCANIA

1ST VICE CHAIRMAN

G. WHITEHEAD  
JAGUAR ROVER TRUMPH

2ND VICE CHAIRMAN

Y. SUZUKI  
SUZUKI

TREASURER

H. LAMM  
BMW

SECRETARY

N. IFAN  
TOYOTA

MEMBERS

ALFA ROMEO  
BMW  
FIAT  
HONDA  
SUZUKI  
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LOTUS  
MAZDA  
MITSUBISHI  
NISSAN  
PEUGEOT  
RENAULT  
ROLLS-ROYCE  
SAAB-SCANIA  
SUBARU  
TOYOTA  
VOLVO

ASSOCIATE MEMBERS

BRIDGESTONE  
LUCAS  
MICHELIN  
PIRELLI  
SCAMPORIT  
SEV  
TOYO TIRE  
YOKOHAMA HUBBER

PRESIDENT

G. NIELD

Enclosed is a copy of California Assembly Bill 1787. This bill would amend the existing Civil Code §1793.2 by adding a new paragraph to subsection (d) which would create a presumption that four attempts to correct the same "nonconformity" or a vehicle's being out of service more than 20 business days during the warranty period would trigger the warrantor's duty to replace or repurchase the warranted vehicle.

Dealer, manufacturer, and importer sources in California report that the present sentiment is that the bill is likely to pass.

We have been informed that an important hearing on the bill will be held on August 11, 1981 by the California Senate Judiciary Committee. A few industry representatives are planning to attend and testify. In view of the discussions at the Board of Directors and Lawyers Committee meetings earlier this month in Colorado Springs, AIA is planning to testify and discuss the following points:

1. To the extent the bill is aimed at getting the attention of the motor vehicle industry to consumer dissatisfaction with service experience, the bill should recognize the efforts of much of the industry towards resolving such problems by adopting the following additional provision:

~~This is the proposed amendment that Sally Turner is unwilling to accept.~~

... ..

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CP-38

"Motor vehicle manufacturers or dealers who offer dispute resolution mechanisms that contain the following criteria shall be exempt.

1. Third party mechanism to resolve disputes between the owner and the manufacturer or between the owner and the dealer;
2. All expenses involved in the administration of the mechanism to be paid by the manufacturer or the dealer;
3. Decision of the third party must be binding on at least the manufacturer or the dealer."

2. The bill establishes bad policy in the following respects:
  - a. the quantifying of a finite number of attempts to correct a mechanical problem is impossible due to the wide variety and varying complexities of different parts or components of modern motor vehicles;
  - b. some failures, even if never fixed, simply do not rise to the level where replacement or repurchase of the entire vehicle is appropriate, e.g. car clock;
  - c. some discretionary or "goodwill" repair attempts would no longer be undertaken for fear of triggering the repurchase or replacement right, e.g. repeated efforts to locate and eliminate odd noises, or repeated efforts to improve fuel economy;



- d. consumer expectations of a defect-free or new car would be raised to an unrealistic level, with resulting consumer dissatisfaction with the industry and the law;
- e. the claimant would be relieved of his normal burden of proving his case but would instead be able to rely on an arbitrary fact to shift the burden to the warrantor, which is unfair and unreasonable and contrary to long established rules of law; the result would be to make it easy for a consumer to get rid of a car that no longer suited the consumer because of factors having nothing to do with warranty service, e.g. exterior color, or model features such as a sedan instead of a station wagon.

3. Technical Defects of the Bill

- a. with regard to the four attempts to fix:
  - i. provision should be made for notice from the consumer to the warrantor after two unsuccessful attempts to fix with an opportunity for a person employed or designated by the warrantor to be present at further fix attempts;
  - ii. "nonconformity" should be more specifically defined in terms of parts or components, so as to avoid different problems being considered within the same fix attempts.
- b. with regard to the 20 days out of service:
  - i. such a provision discriminates against those companies that have warranty durations longer than the current standard 12-month period;

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- ii. no recognition is made of the effect of those warranties which also have a mileage duration limit;
  - iii. unlike the four attempts provision, this provision does not make clear that the 20 days cumulative out of service must be for the same "nonconformity";
  - iv. provisions should be made for notice from the consumer to the warrantor after seven cumulative days out of service;
  - v. no allowance is made for delays caused by events beyond the warrantor's control, e.g. work stoppages or transportation failures;
  - vi. if the point of this provision is the inconvenience to the consumer, a more appropriate remedy would be the furnishing of a comparable car after the 20 days out of service, especially combined with the warranty extension provision already in the law; repurchase or replacement is simply too drastic.
- c. It should be made clear that the law applies only to voluntary express warranties, not implied warranties nor warranties required by statutes, e.g. emissions warranties.

Individual AIA Members are urged to testify in addition to the AIA testimony. Industry sources in California agree that if there is any significant chance of turning the legislature around on this bill, that chance would be enhanced by a large turnout at the hearing, even if individual companies only submitted or read brief statements.



Also, it would be helpful if AIA Members alerted their dealers in California to the existence of, and problems with, this bill. Anticipated dealer problems, in addition to the points noted above include:

- the administrative burden which would fall on the dealers in handling the increased warranty disputes and repurchase or replacement of vehicles where necessary;
- the time and emotional energy required to deal with increased and probably unrealistic consumer expectations; and
- increased financial liability arising out of those cases where repurchase or replacement is required because of service deficiencies rather than product deficiencies.

Comments on the points listed above or additional points which you believe ought to be raised should be communicated to me or Milton D. Andrews (202-347-6007), who is expected to be the AIA representative at the August 11 hearing.



George C. Nield  
President

MDA:pvm





Regional Governmental Affairs Office  
Ford Motor Company

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

August 4, 1981

Mr. Richard Thomson  
Chief Counsel  
Senate Judiciary Committee  
State Capitol - Room 2046  
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Last week I sent you Ford's proposed amendments to Assembly Bill 1787 which were forwarded to me by our Office of General Counsel. One of the paragraphs was missing because the tape was garbled.

Here is that section, which is to be inserted in section (b), page 2 of Mr. Weiner's memorandum to me:

(b) "Same nonconformity" shall mean a condition which is caused by a failure of the same part.

I apologize for any inconvenience this may have caused the Committee.

Sincerely,

RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

cc: Honorable Sally Tanner  
Jim Austin  
Al Davis  
Kathi Hamilton  
Lee Ridgeway  
Loren Smith

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SP-4B



# TRIUMPH Motorcycles America Inc.

6 August 1981

Re: AB1787  
We Oppose

Hon. Omer Rains, Chairman  
Senate Judiciary Committee  
State Capitol  
Sacramento, CA 95814

Dear Senator Rains

We are informed that the above-numbered Assembly Bill, the so-called "Lemon Law," will come before your Judiciary Committee next week.

The Bill requires the repurchase or replacement of a motor vehicle after a "reasonable" number of attempts to conform the unit to the applicable express warranties.

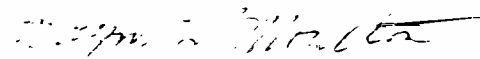
We, like most motor vehicle manufacturers and distributors, are dependent upon our dealer network for warranty repair, and it is perhaps true that there are some whose mechanics are more skilled than others. However, there is little reason why a problem cannot be worked out with reasonable cooperation on the part of all concerned -- the manufacturer or distributor, the dealer, and the vehicle owner.

If a motor vehicle cannot be repaired by the dealer after a reasonable number of attempts, then any manufacturer or distributor will repurchase or replace the vehicle voluntarily. We have all had to do this on occasion. But to give the consumer the added impetus of AB1787 will serve no purpose but to encourage consumers -- not all of whom are models of patience and rectitude -- to fly to their lawyers over any sticky mechanical problem that may arise. This can only serve to jam already-crowded court calendars with picayune complaints over matters which could have been settled justly with the application of time and patience. It seems clear to us that such a law will serve no purpose but to fatten the purses of the legal fraternity.

Indeed, the Californian doesn't need additional laws to protect his consumer rights -- the statute books are already full of them.

May we urge you and your colleagues to give this Bill your most dispassionate assessment in order that you also may foresee the complications which can arise from the passage of this proposed legislation.

Sincerely



Wayne L. Moulton  
President

cc Mr. Richard Thomson, Judiciary Committee Consultant  
Hon. Sally Tanner

SP-44

(800) 666-1917

LEGISLATIVE INTENT SERVICE



# TOYOTA

## TOYOTA MOTOR SALES, U.S.A., INC.

TELEPHONES  
213) 770-1730  
213) 532-5010  
TELEX 673146

2055 WEST 190TH STREET  
TORRANCE, CALIFORNIA 90509

August 6, 1981

Mr. Richard Thomson  
Senate Judiciary Committee  
State Capitol  
Sacramento, CA 95814

Dear Mr. Thomson:

I am writing to you regarding California Assembly Bill 1787 which the Senate Judiciary Committee is scheduled to consider on Tuesday, August 11.

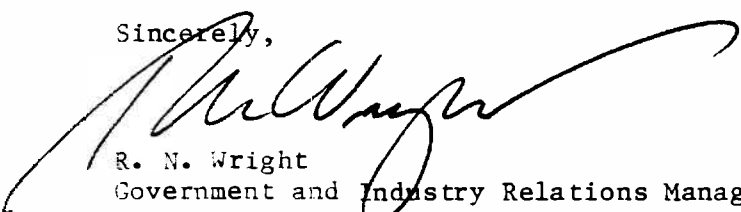
We believe that the proposed legislation does not consider the complexities inherent in automobiles and the automobile service and repair industry. For example, AB 1787 does not address the matter of customer-abused vehicles or overly sensitive reactions to minor problems.

AB 1787 would also discourage discretionary or "goodwill" attempts by the dealer to repair a vehicle. Such attempts would no longer be undertaken for fear of triggering the repurchase or replacement right.

We believe that existing laws adequately and reasonably protect the rights of consumers, manufacturers and dealers, and that manufacturers have already developed systems to respond effectively and fairly to customers with after-sale problems.

For these reasons, Toyota Motor Sales, U.S.A. opposes AB 1787. We urge that you vote against this bill.

Sincerely,

  
R. N. Wright  
Government and Industry Relations Manager

RNW:jk

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-45

# **TRIUMPH** Motorcycles America Inc.

5 August 1981

Re: AB1787  
~~We Oppose~~

Hon. Omer Rains, Chairman  
Senate Judiciary Committee  
State Capitol  
Sacramento, CA 95814

Dear Senator Rains

We are informed that the above-numbered Assembly Bill, the so-called "Lemon Law," will come before your Judiciary Committee next week.

The Bill requires the repurchase or replacement of a motor vehicle after a "reasonable" number of attempts to conform the unit to the applicable express warranties.

We, like most motor vehicle manufacturers and distributors, are dependent upon our dealer network for warranty repair, and it is perhaps true that there are some whose mechanics are more skilled than others. However, there is little reason why a problem cannot be worked out with reasonable cooperation on the part of all concerned -- the manufacturer or distributor, the dealer, and the vehicle owner.

If a motor vehicle cannot be repaired by the dealer after a reasonable number of attempts, then any manufacturer or distributor will repurchase or replace the vehicle voluntarily. We have all had to do this on occasion. But to give the consumer the added impetus of AB1787 will serve no purpose but to encourage consumers -- not all of whom are models of patience and rectitude -- to fly to their lawyers over any sticky mechanical problem that may arise. This can only serve to jam already-crowded court calendars with picayune complaints over matters which could have been settled justly with the application of time and patience. It seems clear to us that such a law will serve no purpose but to fatten the purses of the legal fraternity.

Indeed, the Californian doesn't need additional laws to protect his consumer rights -- the statute books are already full of them.

May we urge you and your colleagues to give this Bill your most dispassionate assessment in order that you also may foresee the complications which can arise from the passage of this proposed legislation.

Sincerely

Wayne L. Moulton  
President

cc Mr. Richard Thomson, Judiciary Committee Consultant  
Hon. Sally Tanner

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SP-46

MAILGRAM SERVICE CENTER  
MIDDLETON, VA. 2264

western union Mailgram



4-043661M219 08/07/81 ICS KACOAMP OAK SACB  
347 PD OAKLAND CALIF

▶ RICHARD THOMPSON  
CONSULTANT  
SENATE JUDICIARY COMMITTEE  
STATE CAPITOL  
SACRAMENTO CALIF 95814

AB 1787 (TANNER)

FOR YOUR INFORMATION WANTED YOU TO KNOW KAISER ALUMINUM  
& CHEMICAL CORPORATION HAS TAKEN THE POSITION OF OPPOSING  
AB 1787 AND HAS SENT THE FOLLOWING MESSAGE TO MEMBERS OF THE  
SENATE JUDICIARY COMMITTEE.

I HOPE YOU WILL VOTE NO ON AB 1787 (TANNER) WHEN IT COMES  
BEFORE THE SENATE JUDICIARY COMMITTEE ON AUGUST 11.

WE BELIEVE THIS 'WARRANTY' BILL WILL NOT DO WHAT IT HOPES  
TO DO IN PROTECTING CONSUMERS AGAINST DEFECTIVE CARS, BUT  
RATHER WILL DELAY THE RESOLUTION OF VALID CONSUMER COMPLAINTS  
AND POSSIBLY INCREASE THE COST OF ALL NEW CARS.

THE PRESENT SONG-VEVERLY ACT AND VOLUNTEER MANUFACTURER AND  
DEALER WARRANTIES ALREADY PROVIDE MECHANISMS FOR RESOLVING  
CUSTOMER COMPLAINTS AND THEIR FLEXIBILITY ALLOWS FOR MEDIATION  
OR BINDING ARBITRATION. MANDATING A DEALER TO REPURCHASE AN  
AUTOMOBILE AFTER FOUR ATTEMPTS TO CORRECT A POSSIBLY MINOR  
PROBLEM WILL SURELY INCREASE THE LIKELIHOOD OF COSTLY AND TIME-  
CONSUMING LITIGATION. THESE COSTS WOULD ULTIMATELY HAVE TO BE  
RECOUPED BY INCREASED AUTOMOBILE PRICES.

THE CONSUMER IS PRESENTLY VERY WELL PROTECTED BY PRESENT  
LAW AND VOLUNTARY WARRANTY PROVISIONS. AB 1787 RAISES THE REAL  
POSSIBILITY OF UNDERMINING THIS PROTECTION BY SETTING THE STAGE  
FOR PROTRACTED LAWSUITS INSTEAD. AB 1787 IS NOT IN THE BEST  
INTERESTS OF THE CONSUMER. PLEASE VOTE AGAINST IT.

R L SPEES  
VICE PRESIDENT - PUBLIC AFFAIRS  
WESTERN REGION  
KAISER ALUMINUM & CHEMICAL CORPORATION  
300 LAKESIDE DRIVE  
OAKLAND CALIF 94643  
TLX 335315

SP-417

LEGISLATIVE INTENT SERVICE (800) 666-1917



BOYDEN, BOOLURIS, HAUSER & SAXE

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 415  
SACRAMENTO, CALIFORNIA 95814  
(916) 441-0868

SAN FRANCISCO OFFICE  
26 POST STREET, SIXTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94108  
(415) 398-1784

August 7, 1981

FILE NO. 220.20

The Honorable Omer L. Rains  
Chairman, Senate Judiciary Committee  
State Capitol  
Room 5082  
Sacramento, CA 95814

Dear Mr. Rains:

This office represents the Western Vehicle Leasing Association, formerly the California Vehicle Leasing Association, a regional trade association comprised of approximately 250 lessors and entities providing services to the leasing community. The Association's membership involved in leasing, the vast majority of whom are based in California, lease in excess of 200,000 vehicles to consumers and businesses throughout the state.

We are writing on behalf of the Association to express its strong opposition to A.B. 1787 which your committee will hear on Tuesday, August 11. This opposition stems not so much from the intent behind the measure which we perceive to be to provide greater specificity to a presently existing provision but rather from the Association's analysis that the bill as presently drafted simply fails to achieve its perceived objective.

Particularly troublesome is the concept that a vehicle out of service by reason of repairs for a cumulative period of more than 20 days may be returned for reimbursement of funds paid. This open ended provision ignores potential abusive treatment by the user as well as the results of accidents and the like which bear no relationship to a failure on the part of the manufacturer to deliver a merchantable product.

Additionally, the Association is concerned that this measure will be abused by certain elements of the consumer public. Insofar as leasing itself is concerned, it must be remembered that the lessor is the owner. Thus, in addition to a myriad of reasons why a lessor would not wish to terminate a lease, not the least of which is that lessors will often have a negative cash flow early in the lease and that even where this is not the case a reimbursement after deducting for use may leave the lessor with a loss, the lessor community

(800) 666-1917

LEGISLATIVE INTENT SERVICE



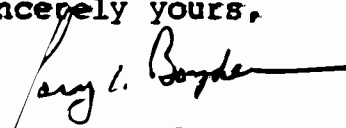
SP-48

The Honorable Omer L. Rains  
August 7, 1981  
Page Two

finds itself caught in the middle between the lessee and the manufacturer. And this bill in its present form certainly leaves entirely unclear the rights of the respective parties in a leasing context. For instance, must a lessor return the vehicle and terminate the lease at the request of the lessee when the presumptions are satisfied? Similarly, may the innocent lessor recover its losses resulting from a termination? Given the rapid growth of leasing, this failure to deal with the rights of all affected parties should not be legislatively sanctioned.

The Association would like to express its appreciation for your consideration of its thoughts in this matter.

Sincerely yours,

  
Cary C. Boyden

CCB:jk

cc: Edward M. Davis  
Robert G. Beverly  
John T. Doolittle  
Milton Marks  
Nicholas C. Petris  
Robert B. Presley  
David A. Roberti  
Alan G. Sieroty  
Sally Tanner  
Richard Thomson ✓  
Western Vehicle Leasing Association  
Bruce Williams

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LEGISLATIVE INTENT SERVICE



SP-49



# A. E. Davis and Company

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

August 7, 1981

To the Members of Senate Judiciary Committee:

Chrysler Corporation urges you to vote NO on AB 1787 (Tanner), the so-called "Lemon" bill, when it is heard by you on Tuesday, August 11.

Here's why.

This bill would place a great time and expense burden on the car purchaser by forcing him or her to go to court to prove that the vehicle's nonconformity fits the language of the proposed amendment contained in AB 1787. We understand that Superior Court cases in Los Angeles now take more than four years to come to trial. This certainly indicates the potential for a purchaser becoming very angry with the court system, his attorney, as well as the dealer and manufacturer because of the delay.

Chrysler can't afford any dissatisfied purchasers, so it has established a procedure of using third parties to resolve, in a matter of weeks instead of years, disputes between the purchaser and the dealer over an unrepaired component of the vehicle during the warranty period. This is accomplished through Customer Satisfaction Arbitration Boards (CSAB). These consist of five members - a certified auto mechanic, a consumer advocate, a public member, a dealer representative and a Chrysler employee. After review of each complaint received from a dissatisfied purchaser, the final decision can be voted on only by the mechanic, consumer advocate and the public member. The decisions, so far, have ranged all the way from denying that the purchaser has a valid case to ordering the dealer and Chrysler to replace the vehicle with a new one. Replacement has taken place in four instances in New York, West Virginia and Missouri involving three passenger cars and one pick-up truck, so this system works and in a matter of weeks, not years as would be the case under AB 1787. The final decision is binding on Chrysler and the dealer, but not on the customer who still has the option of going to court.

In summary, we believe this Chrysler CSAB program is a far better way, and certainly less costly in time and money to the car owner, to get a satisfactory resolution to the problem of the so-called "Lemon" car than the long, drawn out method embodied in AB 1787.

Chrysler again respectfully urges a NO vote on AB 1787.

Thank you.

Sincerely,

A.E. Davis

SP-50

LEGISLATIVE INTENT SERVICE (800) 666-1917

# CALIFORNIA ADVOCATES, INC.

Park Executive Bldg., 925 L Street, Suite 380, Sacramento, CA 95814 (916) 441-5050

August 7, 1981

Members, Senate Committee on Judiciary

Subject: AB 1787 (Tanner) - New Motor Vehicle Warranties

The California Automobile Dealers Association is opposed to AB 1787 (Tanner), the "lemon law" bill. On behalf of two thousand franchised new car dealer members, our reasons for opposing this bill are as follows:

1. The automobile industry has established a variety of workable programs for settling consumer complaints;
2. AB 1787 would create disputes rather than resolve them;
3. Additional litigation undoubtedly would ensue;
4. The price of new vehicles eventually would increase;
5. Existing law provides sufficient remedy to consumers, particularly in light of last year's statutory requirement for providing notice of warranty rights to the customer. (AB 2263, Civil Code 1793.1);
6. The number of vehicles which cannot be corrected to the customer's satisfaction is very small, given the total volume of retail sales in California each year.

We believe that enactment of AB 1787 would be adverse to the consumer's interests. It would encourage litigation rather than negotiation or arbitration in attempted settlement of such disputes.

Sincerely,

  
Robert J. Beckus

  
Loren V. Smith

SP-51

(800) 666-1917

LEGISLATIVE INTENT SERVICE





*Marilyn*



2020 N STREET, SACRAMENTO, CALIFORNIA 95814  
445-4465



August 10, 1981

Honorable Omer L. Rains  
Chairman  
Senate Judiciary Committee  
State Capitol, Room 5082  
Sacramento, CA 95814

Dear Senator Rains:

I would like to express the support of the Department of Consumer Affairs for Assemblywoman Sally Tanner's AB 1787, the new automobile "lemon" bill. AB 1787 will be brought up for your consideration on Tuesday, August 11 in the Senate Judiciary Committee.

The merchantability of new automobiles and the inability to obtain satisfactory repair of defects during, or even after the warranty period, have been serious and expensive problems for new car purchasers. The existing warranty laws have failed to protect such purchasers from having to make numerous trips to the dealer and being left without the use of their car, sometimes for long periods of time, in order to have the same defect or a series of defects repeatedly repaired. In some cases, the warranty will expire, leaving the frustrated purchaser with a vehicle that still has expensive, uncorrected (unsuccessfully repaired) defects -- a so-called "lemon."

California's current warranty law provides the new car purchaser with a right to a replacement vehicle or a refund when a vehicle cannot be fixed. However, that provision is ambiguous. AB 1787 would amend existing law to add that four repair attempts on the same defect or a total of 20 days in the repair shop during the warranty period, are to be used as criteria for establishing at what point a vehicle is sufficiently defective so as to give rise to the consumer's existing right to a replacement vehicle or a refund. In so doing the bill will help clear up the ambiguity in the existing warranty law and encourage automobile manufacturers and their dealers to improve the quality of their new automobiles and to truly correct defective conditions in the cars they sell as quickly as possible.

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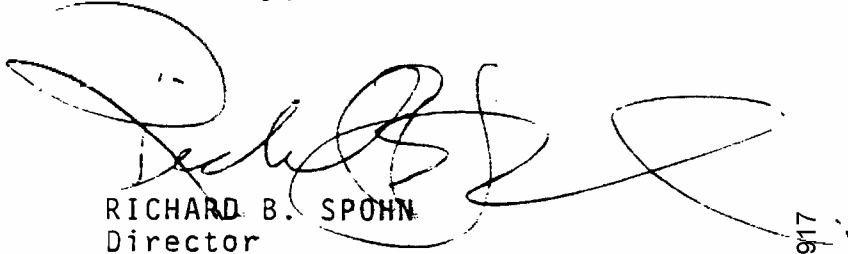


SP-52

Senator Omer Rains  
Page 2

AB 1787 is a modest proposal which, while not a panacea, will improve a difficult, frustrating, and expensive consumer problem and merits your support.

Sincerely,



RICHARD B. SPOHN  
Director

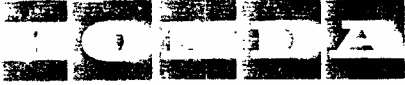
cc: Members & Consultant, Senate Judiciary Committee  
Assemblywoman Sally Tanner

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-53



American Honda Motor Co., Inc.  
 100 W. Alondra Blvd. • P.O. Box 970  
 Gardena, California 90247 • (213) 327-8280

August 10, 1981

California Senate  
 State Capitol  
 Sacramento, CA 95814

This letter is written to set forth American Honda's position with regards to Assembly Bill 1787. In general, we, as members of the Automobile Importers of America (AIA), share the concerns expressed in the AIA's August 6th letter to the Chairman and the Members of the Judiciary Committee, although we doubt that a compulsory loaner car provision would solve the other serious problems inherent in the proposed legislation.

Rather than repeat those concerns, let me make a few observations from our unique standpoint as the only major U. S. distributor of both automobiles and motorcycles. American Honda is a consumer oriented company. We have demonstrated this basic corporate philosophy throughout the years. We feel that this has been the corner stone of our success in this country and world-wide.

Because of this position, American Honda believes the intent of Assembly Bill 1787 in attempting to clarify Section 1793.2 of the Civil Code is appropriate. This clarification, however, from an administrative and practical point of view, causes us some concern.

1. The timelines (20 days) and number of attempts (four) do not take into consideration the possible technical complexity of a repair problem or whether the problem is major or minor. The proposal also lacks the flexibility needed in situations involving customer preceptions of problems, especially where the problem might not actually exist.
2. There is no mechanism for notification to the manufacturer or distributor that "the clock" has started on a specific repair problem. A manufacturer's first notice could be the request to reimburse the customer.

SP-5A

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LEGISLATIVE INTENT SERVICE



August 10, 1981  
American Honda's position  
on Assembly Bill 1787  
Page 2

Even the dealer may not know the number of attempts that have been made to correct a particular nonconformity, if the customer has visited several dealers in an attempt to have the problem resolved. The manufacturer or distributor must have the opportunity to assist the consumer and the dealer before the "time/attempt" period has expired.

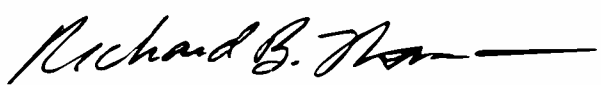
3. No allowance is made for delays caused by events beyond the warrantor's control, i.e., work stoppages, transportation failures, etc.

American Honda feels that the current laws adequately protect the consumer while maintaining a fair balance with both the dealer and manufacturer. We realized many years ago that it is in our own best interest to assure customer satisfaction with our products and this philosophy has paid dividends in repeat sales. We pledge to continue this corporate position well into the future.

Thank you for this opportunity to present our views. I would appreciate the opportunity at tomorrow's hearing to make a brief oral statement and to answer any questions you may have.

Very truly yours,

AMERICAN HONDA MOTOR CO., INC.



Richard B. Thomas  
National Service Manager  
Automobile/Motorcycle/Power Products

RBT:jdc

LEGISLATIVE INTENT SERVICE (800) 668-1917



SP-55

August 19, 1981

The Honorable Sally Tanner  
and the Members of the  
Senate Judiciary Committee  
State Capitol  
Sacramento, California 95814

Re: Assembly Bill 1787

Dear Mrs. Tanner and Members  
of the Senate Judiciary Committee:

We are writing jointly to tell you of Chrysler Corporation's new policy on the 1982 product warranty.

When Chrysler first announced their customer satisfaction board there was some apprehension, as may be expected with such a major undertaking. However, after installation of fifty-four boards and two years of experience we can point with pride to some very significant accomplishments:

1. Excellent dealer support with 95% participation;
2. Positive national and local media coverage;
3. Satisfied owners, a majority of whom indicate an intention to again purchase Chrysler products;
4. A growing consumer awareness that Chrysler Corporation and its dealers are concerned about customer programs;
5. Reduced litigation and small claims action.

Due to the favorable experience with the Chrysler customer satisfaction board, Chrysler Corporation plans to make this procedure a part of Chrysler's 1982 product warranty. By providing an arbitration option for our



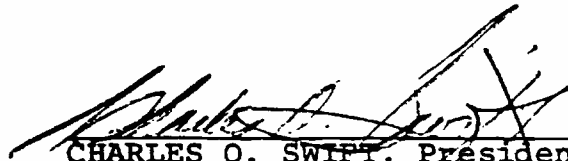
The Honorable Sally Tanner  
and the Members of the  
Senate Judiciary Committee

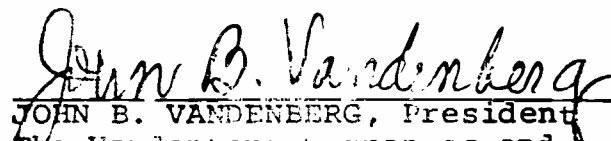
August 19, 1981  
Page Two

customers, we are confident that more warranty problems will be resolved without the necessity of costly litigation. This will result in a substantial increase in customer satisfaction.

We are extremely confident the car buying public will recognize these positive steps toward consumer satisfaction.

Mrs. Tanner and Members of the Senate Judiciary Committee, please allow us to meet with you individually and/or together to express our concerns. We also wish to reconfirm our feelings that AB 1787 as presently written will drive California automobile dealers into economic chaos, a situation which is perilously close to where we are now.

  
\_\_\_\_\_  
CHARLES O. SWIFT, President  
Swift World of Cars and  
Member of Chrysler Arbitration Board

  
\_\_\_\_\_  
JOHN B. VANDENBERG, President  
The Vandenberg Companies and  
Member of the California  
New Motor Vehicle Board

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LEGISLATIVE INTENT SERVICE



SP-57

SENATE COMMITTEE ON JUDICIARY

August 25, 1981

Suggested amendments to Assembly Bill 1787 (Tanner) as amended  
July 7, 1981

Delete Page 4 and insert:

(e) It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles, motor homes, or off-road vehicles, to the applicable voluntary express warranties if within the first 12 months or 12,000 miles, whichever occurs sooner, after delivery to the buyer the same major nonconformity has been subject to repair five or more times by the warrantor or its agents after written notice to the warrantor. A same major nonconformity is any malfunction of the same component or part which renders the motor vehicle inoperable or unusable.

If a third party dispute resolution mechanism exists to resolve disputes between the buyer and warrantor or its agent, this presumption may not be asserted by the buyer until a written complaint is filed with and a decision rendered by such third party. All decisions shall be binding on the warrantor or its agent and shall be rendered within 60 days unless an extension is agreed to by parties to the dispute. All expenses involved in administration of the dispute resolution mechanism shall be paid by the warrantor or its agent.

If a dispute resolution mechanism is not available or the buyer is dissatisfied with the non-binding third party decision, the buyer may assert this presumption in an action for relief provided for in this section. The warrantor or its agent may rebut this presumption by producing evidence (1) that there was and is no nonconformity, or (2) that the vehicle's nonconformity, if any, has been cured, or



Suggested amendments to Assembly Bill 1787 - Page two

(3) that the nonconformity, if any, was and is a minor nonconformity that does not and will not render the motor vehicle inoperable or unusable and an offer to provide fair compensation in money has been communicated to the buyer, or (4) that the nonconformity, if any, was the proximate result of unauthorized or unreasonable use of the vehicle following sale, or (5) other justifiable cause.

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-59





Consumer Action 1417 Irving Street, San Francisco 94122 • (415) 665-2772

March 16, 1982

Senate Judiciary Committee  
State Capitol  
Sacramento, CA 95814

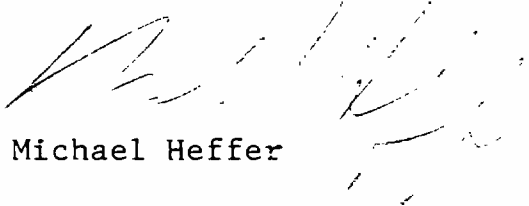
Dear People:

Please make sure that San Francisco Consumer Action is recorded as a supporter of Assembly Bill 1787 (Tanner).

Consumer Action is a non-profit consumer advocacy group.

Thank you.

Sincerely yours,

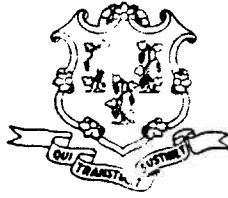


Michael Heffer

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-60



**State of Connecticut**  
HOUSE OF REPRESENTATIVES  
STATE CAPITOL  
HARTFORD, CONN. 06115

REPRESENTATIVE JOHN WOODCOCK  
FOURTEENTH DISTRICT  
P.O. BOX 684  
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER  
ENERGY AND PUBLIC UTILITIES COMMITTEE  
FINANCE, REVENUE AND BONDING COMMITTEE  
JUDICIARY COMMITTEE  
STATE CAPITOL  
TELEPHONE  
566-8650

May 11, 1982

Mr. Jay J. DeFuria  
Assembly Committee on Consumer  
Protection and Toxic Materials  
State Capitol  
Room 4146  
Sacramento, California 95814

RE: Connecticut "Lemon Law"

Dear Mr. DeFuria:

In response to your recent request, I enclose a copy of the Connecticut "Lemon Law," which has received the approval of the Connecticut General Assembly, and which is awaiting Governor William A. O'Neill's signature. I further enclose a copy of the Office of Legislative Research's analysis as to this bill.

Thank you for your continued interest; and if you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

John J. Woodcock, III  
State Representative

JJW:ca

Enclosures -

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-61

Substitute House Bill No. 5729  
As Amended by House Amendment  
Schedule "A"

State of Connecticut  
House of Representatives



Approved by the Legislative Commissioner

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 (NEW) (a) AS used in this act: (1)  
2 "Consumer" means the purchaser, other than for  
3 purposes of resale, of a motor vehicle, any person  
4 to whom such motor vehicle is transferred during  
5 the duration of an express warranty applicable to  
6 such motor vehicle, and any other person entitled  
7 by the terms of such warranty to enforce the  
8 obligations of the warranty; and (2) "motor  
9 vehicle" means a passenger motor vehicle or a  
10 passenger and commercial motor vehicle, as defined  
11 in subdivisions (35) and (36) of section 14-1 of  
12 the general statutes, as amended, which is sold in  
13 this state.  
14 (b) If a new motor vehicle does not conform  
15 to all applicable express warranties, and the  
16 consumer reports the nonconformity to the  
17 manufacturer, its agent or its authorized dealer  
18 during the term of such express warranties or  
19 during the period of one year following the date  
20 of original delivery of the motor vehicle to a  
21 consumer, whichever is the earlier date, the  
22 manufacturer, its agent or its authorized dealer  
23 shall make such repairs as are necessary to  
24 conform the vehicle to such express warranties,



25 notwithstanding the fact that such repairs are  
26 made after the expiration of such term or such  
27 one-year period.

28 (c) If the manufacturer, or its agents or  
29 authorized dealers are unable to conform the motor  
30 vehicle to any applicable express warranty by  
31 repairing or correcting any defect or condition  
32 which substantially impairs the use and value of  
33 the motor vehicle to the consumer after a  
34 reasonable number of attempts, the manufacturer  
35 shall replace the motor vehicle with a new motor  
36 vehicle or accept return of the vehicle from the  
37 consumer and refund to the consumer the full  
38 purchase price including all collateral charges,  
39 less a reasonable allowance for the consumer's use  
40 of the vehicle. A reasonable allowance for use  
41 shall be that amount directly attributable to use  
42 by the consumer prior to his first report of the  
43 nonconformity to the manufacturer, agent or dealer  
44 and during any subsequent period when the vehicle  
45 is not out of service by reason of repair. It  
46 shall be an affirmative defense to any claim under  
47 this act (1) that an alleged nonconformity does  
48 not substantially impair such use and value or (2)  
49 that a nonconformity is the result of abuse,  
50 neglect or unauthorized modifications or  
51 alterations of a motor vehicle by a consumer.

52 (d) It shall be presumed that a reasonable  
53 number of attempts have been undertaken to conform  
54 a motor vehicle to the applicable express  
55 warranties, if (1) the same nonconformity has been  
56 subject to repair four or more times by the  
57 manufacturer or its agents or authorized dealers  
58 within the express warranty term or during the  
59 period of one year following the date of original  
60 delivery of the motor vehicle to a consumer,  
61 whichever is the earlier date, but such  
62 nonconformity continues to exist or (2) the  
63 vehicle is out of service by reason of repair for  
64 a cumulative total of thirty or more calendar days  
65 during such term or during such period, whichever  
66 is the earlier date. The term of an express  
67 warranty, such one-year period and such thirty-day  
68 period shall be extended by any period of time  
69 during which repair services are not available to  
70 the consumer because of a war, invasion, strike or  
71 fire, flood or other natural disaster.

72 (e) Nothing in this act shall in any way  
73 limit the rights or remedies which are otherwise  
74 available to a consumer under any other law.



SP-64

*SEN* AMENDMENT *A-*

LCO No. 3812

General Assembly

February Session, A.D., 1982

Offered by SEN. MUSTONE, 13th District

SEN. SULLIVAN, 16TH DIST.

To Subst. House Bill No. 5729 File No. 700 Calendar No. 0474

Entitled "AN ACT CONCERNING AUTOMOBILE WARRANTIES."

In line 40, after the period, insert the following:

"Refunds shall be made to the consumer, and lienholder if any, as their interests may appear."

After line 74, insert the following:

"(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure."

LEGISLATIVE INTENT SERVICE (800) 666-1917

*SP-65*



CONNECTICUT  
GENERAL ASSEMBLY

OLR BILL ANALYSIS

SPECIAL ANALYSIS

File No. 700 (Previously  
File No. 362)  
4/28/82

sHB 5729 (as amended by House "A" and Senate "A")\*  
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

AMENDED BILL SUMMARY: This bill would require a manufacturer of a new passenger carrying car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If these vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the bill would require the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund would be made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill would require a consumer to attempt to settle the dispute through this mechanism before the bill's provisions requiring a refund or replacement would apply. The bill would specify that the manufacturer would have the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

1. The defect does not substantially impair the vehicle's use and value.
2. The defect was caused by the consumer;s abuse, neglect or unauthorized modification of the vehicle.

The bill would specify that a "reasonable number of attempts" have been undertaken when:

- 1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or
- 2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

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LEGISLATIVE INTENT SERVICE



SP-66

SPECIAL ANALYSIS

SHB 5729

Page 2

File No. 700 (Previously  
File No. 352)

In addition, the bill would extend the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike or fire, flood or other natural disasters.

Finally, the bill would not limit other rights or remedies available to a consumer under any other law.

\*House Amendment "A" eliminates everything after the enacting clause and rewrites the bill as summarized above. The Amendment differs from the original bill by:

- 1) requiring replacement or refund only for defects which substantially impair the vehicle's use and value;
- 2) increasing the allowance for the customer's use of the vehicle from the consumer's use before to the first report of a defect to the consumer's use before this first report and during any subsequent period when the vehicle is not out of service for repair;
- 3) changing the amount of time the vehicle must be out of service for repair from 20 business days to 30 calendar days;
- 4) allowing the extension of the warranty period, one-year period following delivery and the 30-day period because of natural or other disasters; and
- 5) establishing the affirmative defenses for manufacturers in any claim arising under the bill's provisions.

\*Senate Amendment "A" adds the provision concerning the informal dispute settlement mechanism.

EFFECTIVE DATE: October 1, 1982

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-67



COMMENT

Informal Dispute Settlement Mechanisms

The Federal Trade Commission regulations were issued under the authority of the Magnuson-Moss Warranty Act. They must be complied with only if the manufacturer refers to such a mechanism in the warranty. The mechanism's provide a means to mediate disputes between consumers and warrantors. The regulations:

- 1) establish requirements for consumer notification;
- 2) require the mechanism to be insulated from the manufacturer's influence and that the decision-makers not be associated in any way with a party to a dispute;
- 3) require that the mechanism be free to the consumer; and
- 4) generally require that a dispute be settled within 40 days.

DD:dkl:srs



cc: Senate Judiciary Committee  
Automotive Importers Assn.  
California Chamber of Commerce  
California Dealers Association  
California Manufacturers Assn.  
Chrysler Corporation  
General Motors Corporation  
Motor Vehicle Manufacturers Assn.



bcc: Jay DeFuria  
Jerry Giaquinta (Toyota)  
Steve Lending (Datsun)

Regional Governmental Affairs Office  
Ford Motor Company

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

May 20, 1982

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

Subject: Assembly Bill 1787

Dear Assemblywoman Tanner:

Ford Motor Company continues to have problems with your Assembly Bill 1787, as amended on July 7, 1981, including your proposed amendments received by this office on May 18, 1982. In fact, we have some suggested amendments of our own which we would like to discuss with you and your staff. (see attachment)

I therefore recommend that you allow us some time on Monday to discuss our suggestions with you and your staff. We prefer to do this rather than try to rewrite the bill before the Senate Judiciary Committee. If the dealers and other manufacturers also have some problems, they should also be at the same meeting.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in black ink that reads "Richard L. Dugally".

RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

Attachment

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-69

MAY 20 1982

FORD MOTOR COMPANY POSITION

on

California AB 1787

GOVERNMENTAL AFFAIRS

In reviewing California AB 1787, we find that there are several unworkable definitions and overly extensive remedies which should be clarified. Specifically, we believe that there are six basic problems with this legislation which could be remedied through proper language additions.

1. In keeping with the spirit of the Song-Beverly Warranty Act, the bill should clearly exclude commercial vehicles from its coverage. The Song-Beverly Act applies only to consumer goods; however, the proposed legislation is applicable to new vehicles, without defining that term. Accordingly, new vehicles should be defined.

2. Similarly, the existing law provides an extension to the 30-day period for delays caused by conditions beyond the control of the manufacturer or his representatives. We believe this similar provision should be added to the proposed new language.

3. As the Song-Beverly Act in general and this proposed addition in particular are intended to apply to the express warranty provided by the manufacturer, there should be a clear exclusion of any statutorily required warranties. To include such warranties in this legislation would potentially conflict with other federal and state laws.

4. The proposed addition refers in several instances to the same non-conformity without defining that term. It is quite conceivable that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. We believe that consistent with the intention of this legislation, the term "same non-conformity" should be defined as a non-conformity caused by a failure of the same part.

5. The new legislation would require the repurchase of a vehicle based upon an inability to repair under the warranty. Certainly, it could not be the legislative intent to cover vehicles the failures on which have been caused directly by the owner. Thus, the buy-back provision should not be applicable in instances where there has been customer abuse, negligence or modification or alteration to the vehicle.

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LEGISLATIVE INTENT SERVICE



SP-70

Accordingly, the proposed additional legislation should be revised to read as follows:

"It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same non-conformity has been subject to repair three or more times by the dealer, and one time by the manufacturer; or (2) the vehicle is out of service by reason of a non-conformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 30 calendar days. In computing the 30 days pursuant to this section, a day shall mean a full calendar day that the dealer's repair shop is open for business. The 30 days shall commence on the day when, after the defect is first reported or known, a written estimate of the cost of repairing such defect is first prepared. Delays caused beyond the control of the manufacturer or its representatives shall serve to extend the 30-day requirement.

The foregoing provision shall not be applicable to any statutorily required warranties, or in instances where the vehicle has been subject to customer abuse, negligence, or modification or alteration.

For purposes of this section, the following definitions shall apply:

- (a) "New vehicle" shall mean only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight that has not been previously titled or registered, has not been substantially used or damaged and that is sold for personal, household or family use.
- (b) "Same non-conformity" shall mean a condition which is caused by a failure of the same part.

6. The legislation fails to provide any incentive for a repairing dealer to notify the manufacturer of a potential claim for replacement since there is no provision in the law for the courts to allocate some of the burden on the dealer. Thus it is possible for a dealer to "use up" the four repair attempts without ever requesting assistance from the manufacturer. Therefore, without any knowledge of the problem, the manufacturer is forced to suffer the entire cost of replacement or repurchase.



The bill should be revised to include a requirement that the repairing dealer must notify the manufacturer of a potential problem prior to the expiration of the 30-day repair period or the fourth repair is attempted. Further, the courts should be given the discretion to allocate the cost involved in any replacement or repurchase that it orders under the law between the dealer and the manufacturer where appropriate.



SP-72

MAJOR DIFFERENCES BETWEEN PRIOR VERSION AND NEW VERSION OF AB 1787

The new amended version:

- 1) Changes the 20 shop days to 30 calendar days (to conform with the other provisions of Song-Beverly).
- 2) Excludes motorcycles, motorhomes and off-road vehicles (asked for by the industry).
- 3) Limits the bill's provisions (4 times/30 days) to only the first year of ownership or 12,000 miles whichever occurs first (asked for by the industry because of emergence of longer warranties).
- 4) Adds a provision for third party dispute resolution which requires the consumer to first resort to a program which meets specified criteria before being able to use the "lemon" bill's presumption in any lawsuit (asked for by the industry and Senate Judiciary Committee).

The criteria are based on those prescribed by federal warranty law with a few additions. The additions are:

- a) The federal law's criteria as of January 1, 1982 are used (to provide a fixed standard that isn't subject to change without California legislative action).
- b) Decisions are binding on the manufacturer (like Chrysler program).
- c) The manufacturer has a maximum time limit of 30 days to complete work required by a decision (to prevent delay).
- d) The statute of limitations on a consumer's legal rights would be extended for the time during which the consumer is resorting to the dispute program (so the consumer's rights would not be jeopardized).
- e) Not only the actual decision, but also the documents used by a program in reaching a decision could later be used in a legal action if the decision is not accepted by the consumer. (Permits a court to see on what basis the actual decision was reached by a program).
- f) That the annual program audit and information be sent to our Department of Motor Vehicles as well as the Federal Trade Commission (so California will have direct access to the information).





1020 N STREET, SACRAMENTO, CALIFORNIA 95814



May 24, 1982

Honorable Omer L. Rains  
Chairman  
Senate Judiciary Committee  
State Capitol, Room 2032

Dear Senator Rains:

The Department of Consumer Affairs strongly supports AB 1787 (Tanner), which would amend California's existing consumer product warranty law as it pertains to new automobile warranties, a major source of consumer complaints. The bill is scheduled to be heard in your committee on Tuesday, May 25th, at 1:30 p.m.

California's Song-Beverly Consumer Warranty Act (Civil Code Sections 1790-1795.7) states that a manufacturer or its representative who is unable to service or repair a warranted product to conform to the applicable warranty after a reasonable number of attempts must either replace the product or reimburse the purchase price (minus depreciation) to the buyer (Civil Code Section 1793.2(d)). This Act applies to the sale of both new and used motor vehicles covered by a written warranty.

The problem that occurs with so-called "lemons" -- which have one or a series of defects that are never properly corrected despite repeated repair attempts -- is that there are no criteria to enable the parties (or a court) to determine what is a "reasonable number of attempts." The buyer may be required to continue taking the defective automobile back into the dealer throughout the entire warranty period (12 months/12,000 miles) only to have his or her warranty expire with the automobile still not functioning properly. At that point the buyer may be forced to bear the cost for any additional repair attempts, which still may be unsuccessful in correcting the problem(s) with the automobile.

AB 1787 would amend the Song-Beverly Act by adding a new subsection stating that in the case of a new automobile, a reasonable number of attempts shall be presumed to have been undertaken when, within one year of delivery to the buyer or 12,000 miles, whichever occurs first, the same nonconformity has been subject to repair four or more times, or the vehicle is out of service by reason of repair of nonconformities for more than thirty calendar days.

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LEGISLATIVE INTENT SERVICE



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Honorable Omer L. Rains  
Page two

AB 1787 would also provide that if the manufacturer or dealer has established a qualified third party dispute resolution process (as defined in the bill), and if the buyer receives timely notification of the availability of the process, the provisions defining a reasonable number of attempts to repair may not be asserted by the buyer until after the buyer has first resorted to the dispute resolution process.

AB 1787 provides a reasonable and equitable remedy for a major and recurring problem -- the persistently malfunctioning new automobile. We urge your support of this bill.

Should you wish to discuss this measure further, 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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SP 12





NEWS FROM ASSEMBLYWOMAN

# SALLY TANNER

60th Assembly District.

## FACT SHEET

AB 1787 (TANNER) - "LEMON" BILL

Last year, in response to hundreds of letters from consumers who had experienced serious and frustrating problems with defective new automobiles, Assemblywoman Sally Tanner introduced AB 2705. The bill became known as the "lemon" bill because it offered specific protections to purchasers of cars that repeatedly defy repair of defects. The bill was passed by the Assembly, but was defeated in the Senate Judiciary Committee by a single vote.

In spite of the bill's narrow defeat, the outcry from the consuming public for this kind of protection became more and more pronounced as the bill moved through the Legislature. For that reason, Assemblywoman Tanner reintroduced the "lemon" bill on March 27, 1981.

### WHAT THE BILL DOES

- Amends the Song-Beverly Warranty Act, Civil Code Section 1793.2
- Pertains only to new motor vehicles.
- Adds simple language to existing warranty law. Current law states that a consumer is entitled to a refund or replacement if a warranted product is not repaired after "a reasonable number of repair attempts."
- Specifies that a "reasonable number of attempts" shall be four times by the manufacturer or its agents - or 20 cumulative days out of service.

AB 1787 is offered as a simple and reasonable solution to the very real problem experienced by car buyers when - for whatever reason - their new cars don't function properly.

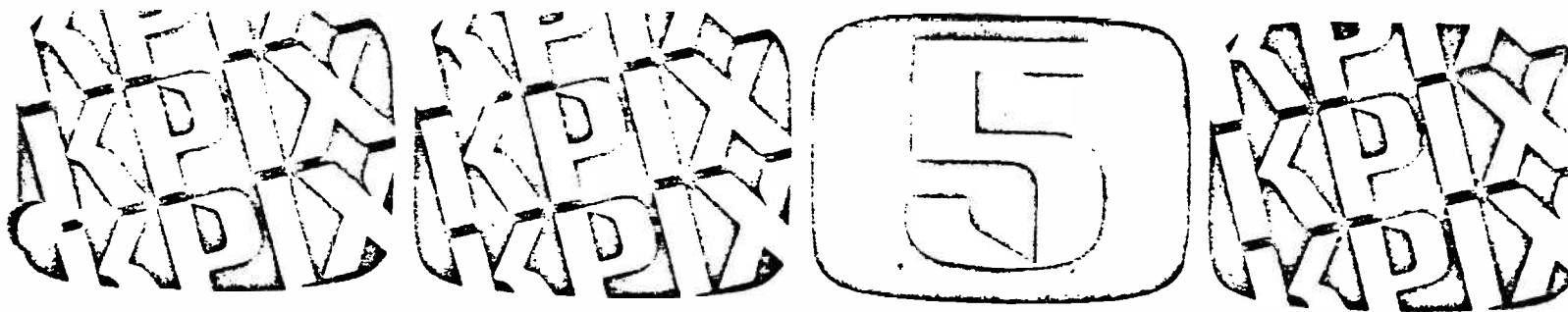
For more information, contact Mike Ross in Assemblywoman Tanner's Capitol office at 916/445-7783.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-716



# EDITORIAL

This editorial is presented in the public interest. Our station welcomes comments on its editorials, opinions and recognizes its obligation to present over these facilities the opposing views of a responsible spokesperson in order to achieve a balanced presentation on this issue.

EDITORIAL #2999

Telecast: 6/10/81 - Sign On, Noon News, John Davidson Show, 6PM News, Sign Off  
6/14/81 - Sign On, Between 2 and 5PM, 6:30PM News, Sign Off

By: Art Kern, Vice President and General Manager

## THE LEMON BILL

Have you ever bought a "lemon"? California consumer agencies get thousands of complaints every year from people who've bought cars that have something wrong with them.

This is a letter from a Pleasant Hill viewer. She says she bought her first new car a year ago. After she started driving the car, she found out that there were all sorts of things wrong with it--bad brakes, a defective wheel bearing, a leaky rear window, and shaky seats. She's been to the repair shop ten times, and she's still got the bad brakes and the shaky seats.

Well, where does that leave her? Nowhere, because even though there's a law that's supposed to help, it doesn't. California consumers can get a refund or a replacement for any product, including a car, if it's not fixed after a "reasonable number" of tries. The trouble is, the law doesn't say what that "reasonable number" is.

There's a bill in the legislature that could change all that. It's known as The Lemon Bill, and it says that after four tries to fix the same problem during the warranty period, a consumer can get a refund or a new car. That sounds like a stiff penalty, but that's what it's going to take to get lemons off the road.

Assemblywoman Sally Tanner is the author of The Lemon Bill. We want her to know that we support the bill, so we're going to send her a copy of this editorial. If you agree that California doesn't need any more lemons, except the kind that grow on trees, write to me at Channel Five and I'll see that Assemblywoman Tanner gets your letters. I'm Art Kern.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



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# EDITORIAL

For information on the KABC Ombudsman Service, call (213) 557-7275. The service is available weekdays, 9:00 a.m. to 5:00 p.m. For more information on the KABC Ombudsman Service, call (213) 557-7275. For more information on the KABC Ombudsman Service, call (213) 557-7275.

**KABC KABC KABC KABC KABC KABC KABC KABC KABC KABC**

3321 South La Cienega Boulevard, Los Angeles, California 90016 (213) 557-7275

#-81-30

## "STOPPING THE MERRY-GO-ROUND"

There is probably no better time to buy a new car because American made autos are getting better every day. Still, whether domestic or foreign, once in a while a lemon is produced. And when that happens, KABC believes the consumer should not be permanently stuck with it.

Getting a new car which is beyond repair might not happen very often, but when it does, the buyer should be able to get either a refund or replacement. In fact, present law does state that you're entitled to those options if a warranted product isn't repaired after a reasonable number of attempts. The problem is who determines what is reasonable.

According to the mail the KABC Ombudsman Service receives, the car buyer has absolutely no say and ends up on a lively merry-go-round of repairs. And while the dealer or manufacturer might be providing service with a smile, it is no laughing matter for the car owner. It means time off from work, days being late, being without transportation, not to mention the danger of driving a defective car.

Assemblywoman Sally Tanner is now sponsoring legislation which specifies that a reasonable number of repair attempts should be three times by the dealer and one time by the manufacturer or a total of 20 days out of service. To KABC, that sounds like a fair solution, but a similar measure failed last year. This time round, we hope the legislature realizes this bill is in no way punitive to the auto industry. It merely recognizes that a car is an expensive purchase, and consumers are entitled to their money's worth.

(Broadcast on Wed. Apr. 22, at 3:56a, 6:20a, 7:20a, 8:20a, 10:56a, and 1:55p, 9:55p, 11:56p.

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SP-78

# INDEPENDENT/PRESS-TELEGRAM

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## Editorials

# Legislature gets second try at creating lemon aid

Last year when freshman Assemblywoman Sally Tanner, D-Los Angeles, was a little bit green, she tried to remedy a yellow situation, the problem of getting stuck with bad cars, commonly referred to as lemons.

Current state and federal law requires manufacturers to replace defective vehicles after "a reasonable number of repairs." But the ill-defined wording in the laws has meant that consumers stuck with lemons have often had to go to court to get a new car.

Last year, Assemblywoman Tanner sponsored AB 2705, which defined a lemon as a car that, within the first year or 12,000 miles, has a major defect, the repair of which would cost more than 5 percent of the purchase price; has a repairable defect that happens three times; or is in the shop 20 days. The manufacturer of a lemon would have to provide a new car, less the cost of depreciation at 10 cents a mile.

The Assembly passed AB 2705. But by a close vote, the bill failed to make it out of the state Senate Judiciary Committee. Assemblywoman Tanner attributes this defeat to the bill's being too complicated. In addition to the complicated definition of a "reasonable number of repairs," the bill contained a lot of other language that troubled the lawyer-legislators on the Judiciary Committee.

The assemblywoman believes the answer is a new, simplified version of last year's bill. AB 1787 will be heard first by the Assembly's new Consumer Protection and Toxic Materials committee chaired, as it happens, by Sally Tanner. It contains a definition of a reasonable number of repairs that is essentially the same as last year's, but it gives

the dealer and manufacturer several chances to repair the car before it is declared a lemon.

Assemblywoman Tanner is confident the Assembly will pass her bill, and believes the newly simplified language of the bill will bring it through the senate Judiciary Committee. Although the Senate is less consumer-oriented than the Assembly, Mrs. Tanner plans to send along to senators copies of letters she has received from disgruntled California car buyers. She figures the letters will be persuasive.

Last year some opponents of the bill argued that it would create a burden on the already beleaguered American auto industry. But any industry that stands behind its products, either voluntarily or through force of law, is not going to suffer. In the long run, its reputation will gain, and so will sales. That would be good for Detroit, and good for consumers.



SALLY TANNER  
Defining a lemon

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SP-79

June 3, 1991

## What is a lemon?

Assemblywoman Sally Tanner (D-El Monte) is determined to define the word "lemon." In the process she also hopes to define "reasonable."

The citrus fruit does not concern Tanner. She has a new automobile in mind: At what point does it become a lemon? She is not satisfied with what the current state law says about it. The existing consumer product warranty law says only that a manufacturer or its agent must provide a refund or a replacement "after a reasonable number" of efforts to repair a non-working product.

What is "reasonable?" Ah, there's the rub.

That's where Sally Tanner, chairwoman of the Assembly Committee on Con-

sumer Protection and Toxic Materials, comes in. She decided that a new motor vehicle becomes a "lemon" when four attempts at repairs have failed, or when the car has been out of service for 20 cumulative days since its purchase.

That, in her mind, not only defines a "lemon," it also defines "reasonable."

She tried this on the Legislature last year. Her amendment got through the Assembly, but it conked out in the Senate Judiciary Committee. She's trying again this year.

We have no idea whether four repair attempts or 20 days of immobility comprise a fair definition of "lemon," but we do admire Sally Tanner for trying to get the Legislature to stop playing a game of Chicken with the word "reasonable."



# The GM lemon crop is so sour that even the company's own top executives are making wry faces in public

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By Ralph Nader  
The Register and Tribune

**G**ENERAL MOTORS is having serious quality control problems with its cars. The giant auto manufacturer's recent lemon crop is so unsettling that the company's chief executives have admitted their worries publicly. According to the Wall Street Journal, GM president James McDonald conceded that the X cars are plagued "with uneven doors, shabby paint jobs and other problems that do not match the quality standards of foreign competitors."

It is not just difficulties with what GM chairman Roger Smith called the "fit and finish." Customers are having trouble with their power steering, transmissions and electrical systems. Consumer Reports has published a reader survey showing a much worse than average frequency of repair for the X models.

We can notice this reaction by the GM car-owner complaints that we receive. Four years ago, Chrysler car complaints were way out of proportion to its market share. Now it seems to be GM that is receiving more than a lion's share of customer indignation.

In particular, GM cannot seem to match its Cadillac quality with its Cadillac price. A page-one article in Automot-

ive News, ordinarily a meek industry trade journal, started with these words:

"General Motors may have a time bomb on its hands with its new Cadillac V-8-6-4. Of the numerous customers interviewed by Automotive News, most said the car can die on the road without warning. Others said the car slows down as if to stall and then jerks forward unexpectedly. Still others reported engine fires."

The magazine reported that some dealers "are in effect buying back the cars equipped with the V-8-6-4 from very dissatisfied customers."

These complaints do not come just from individual owners. Automotive News reports that Jack Schwartz of Gaines Service Leasing Corp. in New York purchased 2,700 of the V-8-6-4 cars for his limousine business. Schwartz says he has had "nothing but headaches" with every one. "The dealer can't fix it and neither can we," he told the magazine. "I could give you a list of 20 people who own Cadillacs and never want to hear the name again," New Jersey Cadillac owner Arthur Pallent told the reporter.

Complaints about GM lemons that my consumer group receive are detailed and forthright. "Something is drastically wrong with the construction, design or engineering of the new V-8-6-4 Cadillacs," sums up a Toledo, Ohio, buyer. From Wayne, N.J., a man writes, "The Cadillac

division should hang its head in shame for perpetrating this hoax on people who were loyal to them. No wonder the Japanese are able to displace the Americans as reliable suppliers of quality vehicles."

A taxicab operator in El Paso, Texas, purchased four 1980 Oldsmobile Cutlacs Diesels. All four vehicles are out of service because of major engine problems and the customer complains that Oldsmobile is refusing to treat this matter seriously.

GM dealers are caught in the middle. They do not build the cars that GM push them to sell. Yet they receive the first brunt of their customers' ire. An Allentown, Pa., woman was careful to make this distinction when she wrote: "The dealer has given me excellent service (on her 1980 Citation), but I am thoroughly discouraged with the Chevrolet Motor Company."

Perhaps this is why more people are resorting to filing consumer class actions against General Motors or using the federal warranty law to achieve some measure of justice. Unless the chief executives of this company become more sensitive to the quality of the vehicles' engineering, GM will continue to use its shareholders' money to pay for bumper lemon crops. GM is very large, indeed, but by the same token it has a great deal to lose.

UNFINISHED SUPPORT FOR LEMON BALL

Department of Consumer Affairs

State Consumer Advisory Council

California Consumer Affairs Association

Cal-Pirg, San Diego

National Council Sr. Citizens

Motor Voters, San Diego

AFL-CIO, State Federation

State Building and Construction Trades Council of California

United Steelworkers of America

Los Angeles City Attorney

Baldwin Park Chamber of Commerce

Santa Cruz County District Attorney

Consumers Union, San Francisco

San Francisco Consumer Action

County of Los Angeles, Dept. of Consumer Affairs

California Federation of Women's Clubs, Orange District

Consumer Aid of Shasta County

Colusa County Board of Supervisors

Stanislaus County, Office of Consumer Affairs

Los Angeles Private Investigation & Patrol Service

California Teamsters Public Affairs Council

Center for Auto Safety

Chico Consumer Protection Agency

Lemon-Aid, San Diego

Consumer Federation of California

Legal Aid Society of San Mateo County

Consumer Coalition

SP-82



R. J. O'Brien  
2745 E. Helen St  
La Mesa, Calif

April 13, 1980  
La Mesa, Calif

AD777

92041

name  
er  
pital  
Calif 95814

ATTN: Lemon Legislation

X

Received your letter asking about our lemon cars. The whole story would be a book, it has been a terrible experience. We have been unhappy for 2 1/2 years. I drive my car every day and everytime I get in it I get upset. I have had night mares that I'd be driving down the freeway and the car would break in half. When you buy a new car you're supposed to be proud and have trouble free driving.

On July 31, 1977 we bought our first new car, a Dodge Aspen Special Edition Wagon. It was a beautiful car. It had quadraphonic stereo, air conditioning, cruise control, split seats etc. We traded in a 1972 Dodge truck with over 100,000 miles on it and it had given us good service. That's why we picked the Aspen. It had the same 318 engine. We got \$1,000.00 for the truck, paid an extra

SP-83



\$94.00. The <sup>(2)</sup> payments were \$232.61 for 36 months we made 6 payments which totaled \$1395.12. We drove the car for a couple days and it started falling apart.

1. It surged and pinged and lunged. fixed at least 5 times and it was never right.

2. Had all kinds of noises and thumps never found out what caused most of them checked many times.

3. The muffler assembly came loose. At this time I crawled under the car to see what the noise had been and happened to notice the bolts on the leaf springs were too short and had no nuts on them. I called the dealer and they said I had to wait two weeks for an appointment. I told them it was dangerous so they took it to check it out. All they wanted to fix were the bolts and muffler. I fought to have the service manager drive it. He drove it half a block and then he said they'd have to keep it. Note: this car was "New Car Prepped" and this problem was not caught (see enclosure "1")

4. All of the tires had to be replaced the steel belts were bad

5. All the shocks had to be replaced.



SP-84

- (3)
6. The car looked like it was going down the freeway sideways. It actually hurt your arms to drive it over any distance of 10 miles.
  7. It fish tailed badly always never could get it fixed after 8 to 10 attempts!
  8. The rear axle assemble had to be realigned and finally replaced (I believe)
  9. The tail gate (lift gate) latch had to be realigned, and the bracket shimmed was always hard to close.
  10. The left door jam had to be lined up
  11. The seat had to be fixed. The bolts kept working loose. It never was right and it was fixed 4 or 5 times
  12. Clock, dome light and dash lights didn't work - dash had to be re-wired
  13. Heater didn't work right fixed
  14. Carpet on back of seats and in rear came unglued - fixed twice.
  15. Transmission shifted so hard it jerked and hurt my back
  16. Pests in top
  17. Rust in various spots inside & out
  18. Cruise control wouldn't hold even speeds. They

\$85



- (4)  
They had the car 2 weeks  
we had it one day and had  
to take it back.
19. Raw gas odor, was carbur-  
eter fixed many times never  
right.
  20. The bolts came out of the  
stabilizing braces in the front  
from the fenders to the fire  
wall. Note we got a recall on this  
a couple weeks after it happened.
  21. pinged going up hills
  22. Never got more than 30mpg
  23. Driving down street and all  
of a sudden it felt like you  
were hitting a curb never right  
(Note the dealer told me the  
factory rep had driven the  
car and said it was all  
right.)
  24. Two days later I was  
driving home from work and  
heard a loud noise and took  
it in immediately, the left front  
brake and wheel bearing had  
come apart.

In the 5 months plus we  
had the car, we drove it  
maybe 3 days a week. I  
think we drove it 3 weeks  
straight one time. The car was  
continuously worked on. Every  
time I drove it something  
else fell off or came loose SP-86



(5)

My husband called and demanded to talk to the Sales manager to complain. He told him we bought a new car and it was falling apart. He (the sales manager) said "If you wanted a perfect car, you should have bought a Mercedes." This didn't help my husband's disposition any. He went to the General manager and understandably was very upset. He demanded they ship the car back to Chrysler Corp and give us our money back. He said (to S.M.) it couldn't be done. My husband caused a scene and they wouldn't talk to him anymore. I took over negotiations. In all the time I spent up there, the mechanics service manager kept saying Aspens were no good, they were not made right. The factory wasn't tooled right to make them. I wouldn't have another Aspen. They kept saying the Diplomat was a better car new factory, new equipment etc. and they had little trouble with them. At this time we tried to get the dealer to do something again. He said it was too late to get a new car and impossible to get our money



back I had <sup>(67)</sup> the feeling that if I kept driving that car it was going to kill me!! I was scared to death. I got together with the general manager and he was willing to trade cars for a Diplomat. At the end of 5 months our Aspen not repairable it was not worth what we owed on it. We lost our down payment, all the money we had payed on it and had to pay \$5000 more to get the Diplomat wagon. The General manager said he never wanted to see that car (the Aspen) again. We thought our troubles were over we just got a new set!! Note: This means we paid tax and license fees etc on 2 cars in 5 months. We're talking close to a \$1000.00 dollars.

On Mar 8 1978. We signed another contract and lost at this point approximately \$3000.00

They put a stereo, cruise control and we paid extra for that. They kept it 4 or 5 days to make sure it was o.k. We drove it for about a month.

Here we go again!

1. Front fan belt loose.
2. License plate no bolts fixed
3. times still loose & rattle.

SP-88



3. Cigarette lighter unit fell out when used fixed 4 or 5 times
4. Stereo switches channel isn't clear one speaker functions sometimes and is very static. The speaker covers fell over and were fixed about 3 times but not the stereo or speaker because it was factory installed - they the dealer installed it)
5. Lock on box in back fell out was fixed
6. Noise in rear left - shocks.
7. Clunking noise underfoot while driving - still does you can feel it with your feet.
8. Speedometer off between 6 + 7 miles. fixed 5 or 6 times still is off.
9. Cruise control doesn't hold fixed 3 or 4 times still doesn't hold.
10. Driver windshield wiper doesn't work right fixed + shim put in - still bad.
11. Rust on door jam - fixed.
12. Rust on tail gate painted 3 or 4 times still there.
13. Tail gate never worked right
14. Tail gate doesn't fit. It was fixed 5 or 6 times still doesn't fit - it has been fooled with so much now the catch is broken and is very difficult to close. The hinges have been



moved etc. (8)

15. The transmission didn't shift right was very sluggish was replaced. Second one was alright for a couple months, it started shifting in to neutral by it self not on steering column just the transmission they said they would order me a new one I waited 7 weeks and heard nothing. I was driving a car everyday on the freeway at peak traffic that went into neutral any time it felt like it. I went up there to see someone and got the run around. I was very upset and called Calping (Calif Public Interest Research Group) explained to them I was driving a car that was dangerous. In 15 minutes I got a phone call from the dealer they had a transmission bring my car in and they would give me a loaner. That transmission was bad also, it was replaced. The present transmission is not working it shifts into 1st gear but then it can wait 5 or 10 miles until it shifts to any other gear no matter what you do. Its been adjusted twice. Still is bad.

15. There's a loud clunk of metal when turning sharp more pronounced to left. Still does. P-90



(9)

16. The horn stopped working was fixed twice then said nothing was wrong still doesn't work right.

17. The electronic ignition computer went out. We went through hell with the car in July & Aug. couldn't go over 20 mph. There was so much smoke coming out we pulled into the fire station and had the fireman check it out. There was no fire. The service dept said they couldn't take it for a couple weeks that we had water in our gas and it cost \$250.00 to clean everything out. I took a day off from work paying some one to take my place I wanted to see the water. Well there was not any. They took the carburetor apart the spark plugs off (they were carboned up) They finally took the ignition computer off. They didn't have any in stock so they took one off a wrecked Aspen and put it on my Diplomat. They said they'd order me a new one. I'm still waiting!

18. Heat risers making noise fixed or adjusted 5 or 6 times.

19. The odometer went crazy over 35 miles it would flip to 100 then 200 miles etc. SP 91





I went to the <sup>1107</sup> San Diego Zoo.  
Which is 12 miles and it  
registered over 300 miles. It  
was replaced.

20. We keep blowing a fuse  
that is our tail & side lights +  
dash lights they took everything  
out and couldn't find anything  
wrong with the wiring - the  
head liners never been right  
since.

21. This car also looks like its  
going down the street  
sideways.

We went to look at other  
cars Ford, G.M. Toyota,  
Datsun etc. These people just  
laughed offered us \$2000 or  
\$3000 dollars. We would lose  
4 to \$5000 dollars. We cannot  
afford this.

We went to the State Dept of  
Consumer affairs they  
couldn't do anything. We  
went to the auto motives division,  
they sent us to the D.M.V. they  
said we could challenge  
the dealers bond but again  
at a loss.

We went to an attorney. We  
told him the whole story. He  
said that we should of had  
him at the exchange of cars,  
that we would have to put SP. 92



everything done (111)  
names who said what & when.  
He said I would have to go  
to a psychiatrist to prove I was  
upset, also that it would take  
3 to 6 years to get to court it  
would have to go to superior  
court and would probably  
cost another \$4000. to \$5000. or  
dollars maybe more. We had a  
case for court but all we'd  
get out of it is self satisfaction.  
He said we would probably  
do better on our own and to  
try T.V. action lines etc.

I have been working with  
Calping to see if we can  
get some satisfaction.

We get our mail from Chrysler  
to two different names my husband  
transposed - H. R. Everett - R. Helmer

After having purchase two new  
cars and having the same  
problems. We feel that we  
have given Chrysler Corp. ample  
opportunity to repair or produce  
a functional automobile and  
we want our money back not  
just part of it but all of it

Thank you

Mrs. & Mrs. Richard Helmer  
8745 Eldon St La Mesa, Calif  
phone 714-469-4458 92041

SP-93



Legislative Analyst  
May 13, 1981

REVISED  
ANALYSIS OF ASSEMBLY BILL NO. 1787 (Tanner)  
As Amended in Assembly April 27, 1981  
1981-82 Session

AB 1787 (Am. 4/27/81 REVISED)

Fiscal Effect:

Cost: No added cost.

Revenue: None.

Analysis:

This bill clarifies the law pertaining to new vehicle warranties by specifying the circumstances under which a manufacturer or dealer must replace a defective vehicle or otherwise compensate the buyer.

Existing law requires the vehicle manufacturer either to replace the vehicle or refund, on an adjusted basis, its purchase price after a "reasonable" number of attempts to repair the vehicle have failed. This bill defines what shall constitute a reasonable number of such attempts.

The Department of Motor Vehicles, which licenses vehicle dealers, anticipates no additional cost as a result of this bill.

82

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THIRD READING

<b>SENATE DEMOCRATIC CAUCUS</b>  SENATOR PAUL B. CARPENTER Chairman	Bill No.: AB 1787 Amended: 6-3-82 Author: Tanner (D) Vote Required: Majority Assembly Floor Vote: 48-22
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SUBJECT: Warranties

POLICY COMMITTEE: Judiciary

AYES: (6) Doolittle, Robbins, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill provides that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles whichever occurs first (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; and the buyer after being notified by the manufacturer of the requirement has at least once directly notified the manufacturer of the need for the repair of the nonconformity or, (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 days since the delivery of the vehicle to the buyer. The bill provides that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill also provides that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

FISCAL EFFECT: No state cost.

PROPOSERS: (Verified by author 6-2-82)

Los Angeles City Attorney  
KPIX  
KABC  
Long Beach Independent Press-Telegram  
Santa Barbara News Press  
State Consumer Advisory Council

CONTINUED



PROPOSERS, continued:

Department of Consumer Affairs  
California Consumer Affairs Association  
Cal-Pirg San Diego  
National Council of Senior Citizens  
Motor Voters, San Diego  
AFL-CIO, State Federation  
State Building and Construction Trades Council of California  
United Steelworkers of America  
Baldwin Park Chamber of Commerce  
Santa Cruz County District Attorney  
Consumer Union, San Francisco  
San Francisco Consumer Action  
County of Los Angeles, Department of Consumer Affairs  
California Federation of Women's Clubs, Orange District  
Consumer Aid of Shasta County  
Colusa County Board of Supervisors  
Stanislaus County, Office of Consumer Affairs  
Los Angeles Private Investigation & Patrol Service  
California Teamsters Public Affairs Council  
Center for Auto Safety  
Chico Consumer Protection Agency  
Lemon-Aid, San Diego  
Consumer Federation of California  
Legal Aid Society of San Mateo County  
Consumer Coalition

(Ford, Chrysler, General Motors, California Auto Dealers Association, Motor Vehicle Manufacturers Association, American Honda Motor Co., California Conference of Machinists are neutral)

OPPOSERS:

Automobile Importers of America

ARGUMENTS IN SUPPORT:

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

CONTINUED



**Roll Call**

The roll was called and the bill was passed by the following vote:  
**AYES (28)**—Senators Ayala, Beverly, Boatwright, Campbell, Carpenter, Davis, Dills, Ellis, Foran, Greene, Holmdahl, Johnson, Keene, Marks, Mello, Montoya, Nielsen, O'Keefe, Petris, Presley, Rains, Robbins, Roberti, Russell, Staroty, Stiern, Vuich, and Watson.  
**NOES (4)**—Senators Richardson, Schmitz, Seymour, and Speraw.  
Bill ordered transmitted to the Assembly.

6-24-82

p. 11356



California  
Manufacturers Association



923 12th Street, P.O. Box 1138, Sacramento, California 95805 (916) 441-5420

April 10, 1981

The Honorable Sally Tanner  
Member of the California Assembly  
State Capitol, Room 2016  
Sacramento, California 95814

Dear Sally:

This letter confirms the conversation between yourself and our Transportation Director, Jess Butcher, regarding our opposition to AB 1787.

The auto industry has made substantial progress in settling buyer disputes through establishment of consumer councils. We believe this approach should be given a fair chance and legislation implemented only as a last resort.

Jess Butcher will follow AB 1787. He will be available to you or your staff at anytime to discuss this legislation.

Sincerely,

ROBERT T. MONAGAN  
President

RTM:nr

cc: Members, Assembly Consumer Protection &  
Toxic Materials Committee

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AB 17827

Final Action: DPA

Senate Committee on JUDICIARY

Record of Roll Calls

PROPOSERS (and Arguments):

Bill Number: AB 1782

Date of Hearing: 5/25/82

*3 party dispute program  
Author's Amendments*

		Aye	No
Doolittle	(R)	X	
Marks	(R)		
Petris	(D)		
Presley	(D)		
Robbins	(D)	X	
Roberti	(D)		
Sieroty	(D)	X	
Davis (V.Ch.)	(R)	X	
Rains (Ch.)	(D)	X	
<del>Walters</del>	(D)	X	
Total		[6]	[0]

OPPOSERS (and Arguments):

*Two Key Concepts.  
1. 4 repair attempts  
2. 30 day period > = 3rd Party  
dispute program*

*Automobile Injuries Association*

Total Membership: 9  
Votes Needed for Passage: 5

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lower  
board

Make up  
Amendments: 3yr compromise

Substantive Franchise New Car Dealers - removed opposition

1. Notification of problem by owner to dealer  
notice to manufacturer
2. 30 day limit extended in cases beyond control.
3. Buyer must ~~notify~~ notify manufacturer in prescribed time periods
4. Written complaints - documentation
5. Major nonconformity - exclusion of commercial vehicles - RV - off roads & motorcycles.
6. Impair use, value or safety of car (conformity)
7. 4 tier notices of nonconformity
  - i. mediator panel
8. 3rd Party dispute program

Motor Vehicles Manufacturers - Remove opposition

Automobile Importers Association

which shall include 10 calendar days after notification by the buyer to the manufacturer that 20 calendar days have already passed



# SENATE REPUBLICAN CAUCUS

## SENATOR KENNETH L. MADDY, Chairman

POSITIONS:

SEE COMMENTS

BILL NUMBER: AB 1787

AUTHOR: Tanner, et al.

AMENDED COPY: 6/3/82  
MAJORITY VOTE

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1787	
DATE OF HEARING:	5-25-82	
SENATORS:	AYE	NO
Boalittle	✓	
Petrie		
Fretley		
Robbins	✓	
Robertt		
Cleroty	✓	
Watson	✓	
Davis (V. Chair.)	✓	
Rains (Chairman)	✓	
TOTAL:	6-0	

Assembly Floor Vote: 48-22, P. 4860 (6/15/81)

DIGEST :

- 1 This is the so-called "lemon" bill.
- 2
- 3 This bill requires automobile warrantors to either replace a vehicle
- 4 or reimburse the buyer within 12 months of 12,000 miles if a defect
- 5 on a new vehicle:
- 6
- 7 1. Is not repaired within four attempts, at least one attempt
- 8 being by the manufacturer or, if
- 9
- 10 2. The vehicle is out of service by reason of the repairs for a
- 11 cumulative total of more than 30 days since the delivery of
- 12 the vehicle to the buyer.
- 13
- 14 Buyers would be required to notify the manufacturer of the defect.
- 15
- 16 The 30 day limit could be extended only if repairs cannot be per-
- 17 formed due to conditions beyond the control of the manufacturer.
- 18
- 19 Presumption that a motor vehicle was a "lemon" and subject to
- 20 replacement could not be asserted by the buyer until after the
- 21 buyer has resorted to an existing qualified third party dispute
- 22 resolution process.
- 23
- 24 The manufacturer would be bound by the decision of the third party
- 25 but the buyer could sue the manufacturer if he was not satisfied
- 26 with the decision.
- 27
- 28 FISCAL EFFECT: Appropriation, no. Fiscal Committee, no. Local, no.
- 29
- 30
- 31
- 32

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COMMENTS:

According to the Assembly Office of Research, the Assembly Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

Proponents of the legislation maintain that the current law is not useful to consumers who purchase defective vehicles, because auto dealers and manufacturers want endless opportunities to correct defects. Consumer groups argue that the clear standard proposed in AB 1787 offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

POSITIONS

## Support:

Department of Consumer Affairs  
Consumers Union  
California Consumer Affairs Association  
San Francisco Consumer Action  
Santa Cruz County District Attorney  
Santa Cruz County Consumer Affairs  
Los Angeles County Department of Consumer Affairs  
Consumers Aid of Shasta, Inc.  
Center for Auto Safety  
Stanislaus County Department of Consumer Affairs  
State Consumer Advisory Council  
Los Angeles Herald Examiner

## Opposed:

All opposition except from the Auto Importers of America was removed with the latest amendments, according to the author's office (6/4/82).



Assembly Noes:

**AYES—48**

Agnos	Farr	Levine	Stirling L.
Alatorre	Felando	Lockyer	Tanner
Bane	Greene	Martinez	Thurman
Bates	Hannigan	McAlister	Torres
Berman	Harris	McCarthy	Tucker
Bosco	Hart	Moore	Vasconcellos
Campbell	Hughes	Moorhead	Vicencia
Chacon	Imbrecht	Roos	Waters, M.
Cortese	Johnston	Rosenthal	Waters, N.
Cramer	Kapiloff	Ryan	Wray
Deddeh	Katz	Sher	Young
Elder	Lehman	Statham	Mr. Speaker

**NOES—22**

Baker	Frizzelle	La Follette	Sebastiani
Costa	Hallett	Lancaster	Stirling, D.
Duffy	Ivers	Lewis	Wright
Filante	Johnson	Marguth	Wyman
Floyd	Kelley	Naylor	
Frazer	Konnyu	Rogers	

Bill ordered transmitted to the Senate.

Assembly Coauthors: Alatorre, Cramer, Elder, Kapiloff, Katz, Martinez, Moorhead, Robinson, Roos, Rosenthal, Tucker, Farr, Lockyer, Johnston, Lehman, Torres, and M. Waters

Senate Coauthors: Roberti, Sieroty, and Watson

6/4/82:jc

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CONCURRENCE IN SENATE AMENDMENTS

AB 1787 ( Tanner ) As Amended: June 3, 1982

ASSEMBLY VOTE 48-22 ( June 15, 1981 ) SENATE VOTE \_\_\_\_\_ ( June 24, 1982 )

Original Committee Reference: C. P. & T. M.

DIGEST

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

As passed by the Assembly, this bill required automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out-of-service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would have meant a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would have begun on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

The Senate amendments:

- 1) Exclude motorcycles, motorhomes, off-road vehicles and commercial vehicles.
- 2) Limit the manufacturer's liability to correcting defects discovered during the first year or 12,000 miles after purchase of the vehicle.
- 3) Increase the out-of-service provisions from 20 to 30 calendar days.
- 4) Adopt the requirement that before a buyer can receive replacement or reimbursement he or she must submit to any available qualified third party dispute resolution process. This process must follow Federal Trade Commission requirements.

FISCAL EFFECT

None. According to the Legislative Analyst, the Department of Motor Vehicles, which licenses vehicle dealers, anticipates no additional cost as a result of this bill.

- continued -

COMMENTS

The Assembly-Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

This bill establishes a standard for when a "reasonable" number of repair attempts has been undertaken by a new car warrantor. Consumer groups maintain that current law is not useful because auto dealers and manufacturers want endless opportunities to correct defects. Proponents of the bill argue that the clear standard proposed in this bill offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

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SACRAMENTO ADDRESS  
STATE CAPITOL  
SACRAMENTO 95814  
(916) 445-7783

DISTRICT OFFICE ADDRESS  
1100 VALLEY BOULEVARD  
SUITE 106  
EL MONTE, CA 91731  
(818) 442-9100



# Assembly California Legislature

**SALLY TANNER**  
ASSEMBLYWOMAN, SIXTIETH DISTRICT  
**CHAIRWOMAN**  
COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

COMMITTEES:  
CONSUMER PROTECTION AND  
TOXIC MATERIALS  
EDUCATION  
GOVERNMENTAL ORGANIZATION  
LABOR AND EMPLOYMENT  
CHAIRWOMAN:  
HAZARDOUS WASTE MANAGEMENT  
COUNCIL  
MEMBER:  
JOINT COMMITTEE ON  
FIRE POLICE EMERGENCY  
AND DISASTER SERVICES  
SELECT COMMITTEE ON  
PLASTIC PIPE  
OVERSIGHT  
SELECT COMMITTEE ON  
INTERNATIONAL WATER TREATMENT  
AND RECLAMATION  
STATEWIDE TASK FORCE  
ON COMPARABLE WORTH

1984

Dear Friend:

Thank you for your recent inquiry concerning AB 1787, the new automobile "lemon" bill, which went into effect January 1, 1983.

In 1982 the Legislature responded to the many complaints from purchasers of defective new cars by passing Assembly Bill 1787 which I authored. AB 1787 provides standards for when it is appropriate for a buyer of a new car to obtain a refund or replacement.

I am enclosing a copy of the bill along with a fact sheet outlining its major provisions which I hope will be helpful to you.

Generally, a buyer who has problems with his or her new car should first contact the dealer to have it corrected. If that proves to be unsatisfactory, then the buyer should next contact the automobile manufacturer in writing. The address of the manufacturer's nearest "zone" office or customer relations office should be listed in your owner's manual or be available from the dealer.

There are two state agencies which can assist you in obtaining satisfactory repairs or warranty service from both the manufacturer and the dealer. The first is the Department of Motor Vehicles which licenses both auto dealers and manufacturers and which has offices throughout the State. The other is the New Motor Vehicle Board located in Sacramento. The Board's address is 1507 21st Street, Suite 330, Sacramento, CA 95814 - 916/445-1888. You may obtain a written complaint form from these two agencies to fill out and return to them for investigation.

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You may also wish to contact the State Department of Consumer Affairs, Complaint Assistance Unit, at 1020 N Street, Room 586, Sacramento, CA 95814 - 916/445-0660 (10 AM to 3 PM) with help on questions and for additional assistance.

Also, most auto manufacturers and dealers have established dispute resolution programs to resolve customer disputes which have not been satisfactorily resolved by either the dealer or the manufacturer. These programs are free to the consumer and you may want to file a complaint with them to resolve your problem. Information about which program your manufacturer or dealer belongs to and how to contact them should be available from either the dealer itself or the manufacturer's offices in California. I have attached a sheet listing the various programs currently available to auto owners.

Since various state and federal laws give a buyer specific legal rights, you may also want to contact an attorney about your problems and these rights.

Thank you again for your interest and please let me know if I can be of further assistance.

Sincerely,



SALLY TANNER  
Assemblywoman, 60th District

ST:mb  
Enclosures

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CHAPTER 388

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor July 7, 1982. Filed with Secretary of State July 7, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, as defined, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read: 1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

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

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter 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. 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.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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

(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

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

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

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

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FACT SHEET

CALIFORNIA'S - NEW AUTO "LEMON" LAW

AB 1787 (Tanner) - Chapter 388, Statutes of 1982

California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.,) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). That law entitles a buyer to a refund or a replacement from the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts.

The new auto "lemon" law (which took effect January 1, 1983):

- Adds to the Song-Beverly Act a new provision which applies only to warranted new (not used) motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.
- Specifies that within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same nonconformity (defect) or a cumulative total of 30 calendar days out of service because of repairs of any defect(s), will be presumed to be "reasonable".

"Nonconformity" is defined as one which substantially impairs the use, value or safety of the vehicle.

The buyer is required to directly notify the manufacturer for repair of the same nonconformity once out of the 4 times if the manufacturer includes information about that required notice and the buyer's refund/replacement and "lemon" law rights with the warranty and owner's manual.

The 30-day limit can be extended only if repairs can't be performed because of conditions beyond the manufacturer's control.

- Requires a buyer to first resort to a third-party dispute resolution program before he or she can use the "lemon" presumption if a program meeting specified criteria has been established by the manufacturer of the buyer's vehicle.
- The criteria for the dispute resolution program incorporate those specified by federal consumer warranty law, the Magnuson-Moss Consumer Warranty Act (15 United States Code, Sections 2301-2310) and its Federal Trade Commission (FTC) regulations (16 Code of Federal Regulations Part 703).

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The law's minimum criteria for a dispute resolution program include requirements for:

- (1) Notifying a buyer about the existence, location and method for using the program, both at the time of sale (in the warranty itself) and later, if a dispute arises.
- (2) Insulating the program from the influence of the manufacturer over any decision making - including adequate funding for the program and qualifications for the program's decision makers.
- (3) The program to be free to the buyer.
- (4) The operation of the program, including that:
  - (a) A decision generally be reached within 40 days from receipt of a complaint.
  - (b) The decision is not binding on the consumer if he or she rejects it, but would be on the manufacturer if the consumer chooses to accept it.
  - (c) A party to the dispute be given the opportunity to refute contradictory evidence offered by the other and offer additional information.
  - (d) The manufacturer complete any work required within 30 days.
  - (e) The time limits on a buyer's right to sue are extended during the period he or she is involved in the dispute program.
- (5) Maintaining specified records of the program's operation.
- (6) An annual independent audit of the program and its implementation - which is to be sent to the Department of Motor Vehicles.
- (7) The availability of statistical summaries concerning the program upon request.

#####



AUTOMOBILE MANUFACTURERS' INFORMAL DISPUTE RESOLUTION PROGRAMS

Chrysler Corporation - Customer Satisfaction Board

Northern California: John Billings, Customer Relations  
Manager  
P.O. Box 1414  
Pleasanton, CA 94566  
415/484-0646

Southern California: T.W. Alley, Coordinator  
P.O. Box 4120  
Fullerton, CA 92634  
714/870-4000

Ford - Ford Consumer Appeals Board

Northern California: Ford Consumer Appeals Board of  
Northern California  
P.O. Box 909  
Milpitas, CA 95035

Southern California: Ford Consumer Appeals Board of  
Southern California  
P.O. Box 4630-P  
Anaheim, CA 92803

TOLL FREE NUMBER: (800)241-8450

General Motors/Volkswagen of America/Nissan(Datsun) - Better  
Business Bureau

Northern California: For area codes 916, 707, 415, 408, and  
209: Call your nearest Better  
Business Bureau office or  
1-800-772-2599

Southern California: For area codes 213, 619, 714, 805:  
Call your nearest Better Business  
Bureau office or 1-800-252-0410

-over-

(800) 666-1917

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A-7

American Motors & all Foreign Automobile Manufacturers, except Volkswagen of American (VW, Porsche, Audi) and Mercedes-Benz; and participating dealers for dealer related disputes:

AUTOCAP (Automotive Consumer Action Program) Sponsored by the National Automobile Dealers Association

Northern California:        AUTOCAP  
                                  1244 Larkin Street  
                                  San Francisco, CA 94109  
                                  415/673-2151

Southern California:  
(Except San Diego Area)    AUTOCAP  
                                  5757 West Century Boulevard  
                                  Suite 310  
                                  Los Angeles, CA 90045  
                                  (800)262-1482 (Toll Free calls from  
  213, 619, 714, and 805  
  Area Codes)  
                                  213/776-0054

San Diego:                    AUTOCAP  
                                  2333 Camino Del Rio South  
                                  Suite 265  
                                  San Diego, CA 92108  
                                  714/296-2265

**RELEVANT CALIFORNIA STATE AGENCIES**

New Motor Vehicle Board (NMVB)  
1507 21st Street  
Suite 330  
Sacramento, CA 95814  
916/445-1888  
(Authorized to investigate activities of licensed auto  
dealers and manufacturers)

Department of Motor Vehicles (DMV)  
Complaint form available by calling or visiting your  
nearest DMV office.  
(Licenses auto dealers and manufacturers)

Department of Consumer Affairs  
Complaint Assistance Unit  
1020 N Street, Room 579  
Sacramento, CA 95814  
916/445-0660 (10 AM - 3 PM)  
(For general information about consumer rights and remedies)



TITLE 1.7  
Consumer Warranties

Chapter

1. Consumer Warranty Protection. §§ 1790–1795.7.
2. Standards For Warranty Work. §§ 1796, 1796.5
3. Mobilehome Warranties. §§ 1797–1797.5.

CHAPTER 1  
Consumer Warranty Protection

Article

1. General Provisions. §§ 1790–1790.4.
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ARTICLE 1  
General Provisions

§ 1790. Title.

§ 1790.1. Enforceability of waiver.

§ 1790.2. Severability.

§ 1790.3. Construction in case of conflict with Commercial Code.

§ 1790.4. Cumulative remedies.

*Cal Jur 3d Sales § 68; Cal Forms-6:2, 24:1.*

§ 1790. [Title.] This chapter may be cited as the “Song-Beverly Consumer Warranty Act.” [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Cal Forms-6:102; Witkin Summary (8th ed) pp 1128, 1277.*

§ 1790.1. [Enforceability of waiver.] Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be

deemed contrary to public policy and shall be unenforceable and void. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Witkin Summary (8th ed) pp 1150, 1220, 1278.*

§ 1790.2. [Severability.] If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, such invalidity shall not affect other



provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1970 ch 1333 § 1.]

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

chapter shall prevail. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Cal Forms-24:3; Witkin Summary (8th ed) p 1128.*

§ 1790.4. [Cumulative remedies.] The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy that is otherwise available, and, in particular, shall not be construed to supplant the provisions of the Unfair Practices Act. [1971 ch 1523 § 1, operative January 1, 1972; 1976 ch 416 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Witkin Summary (8th ed) p 1219.*

ARTICLE 2

Definitions

§ 1791. Definitions.

§ 1791.1. "Implied warranty of merchantability": "Implied warranty of fitness."

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§ 1791. [Definitions.] 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. "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 be-

tween 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.

(m) "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.

(n) "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. [1970 ch 1333 § 1; 1971 ch 1523 § 2, operative January 1, 1972; 1976 ch 416 § 1.5; 1977 ch 598 § 1; 1979 ch 1023 § 1; 1982 ch 619 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 191, 201; *Cal Forms-6:102, 24:2, 24:37; Witkin Summary (8th ed) pp 1129, 1154.*

**§ 1791.1. ["Implied warranty of merchantability": "Implied warranty of fitness."] 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 (1) 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 and (2) that when there is a sale of an assistive device sold at retail in this state, then there is an implied warranty by the retailer that

the device is specifically fit for the particular needs of the buyer.

(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. [1970 ch 1333 § 1; 1971 ch 1523 § 3, operative January 1, 1972; 1978 ch 991 § 2; 1979 ch 1023 § 1.5.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 192, 193, 194, 203; *Cal Forms-24:1, 24:2; Witkin Summary (8th ed) pp 1138, 1139, 1140, 1154.*

**§ 1791.2. ["Express warranty"].** (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. [1970 ch 1333 § 1; 1978 ch 991 § 2.5.] *Cal Jur 3d Consumer and Borrower Protection Laws § 196; Cal Forms-24:2, 24:12, 24:31; Witkin Summary (8th ed) pp 1131, 1132, 1133, 1136.*

§ 1791.3. ["As is": "With all faults".] As

used in this chapter, a sale "as is" or "with all faults" means that the manufacturer, distributor, and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:2.*

### ARTICLE 3

#### Sale Warranties

- § 1792. Implied warranties: Manufacturer's warranty of merchantability.
- § 1792.1. Manufacturer's implied warranty of fitness for particular purpose
- § 1792.2. Retailer's or distributor's implied warranty of fitness for particular purpose
- § 1792.3. Waiver of implied warranties
- § 1792.4. Disclaimer of implied warranty; Contents of written notice; catalog sales
- § 1792.5. "As is" sales
- § 1793. Express warranties.
- § 1793.02. Assistive devices sold at retail: Requisite warranty: Nonexclusiveness of rights and remedies provided.
- § 1793.05. Vehicle manufacturers altering new vehicles into housecars: Warranty responsibility.
- § 1793.1. Form of express warranties
- § 1793.2. Duty of manufacturer making express warranty; Service and repair facilities; Presumption as to new motor vehicle
- § 1793.3. Failure to provide service facility in conjunction with express warranties
- § 1793.35. Replacement of or reimbursement for clothing or consumables
- § 1793.4. Time for buyer to exercise option for service and repair
- § 1793.5. Manufacturer's liability to retailer on failing to maintain service facilities
- § 1793.6. Manufacturer's liability to independent serviceman performing services or incurring obligations
- § 1794. Buyer's right to damages; Measure; Penalty; Attorney's fees
- § 1794.1. Damages recoverable by retail seller and independent serviceman.
- § 1794.3. Effect of unauthorized or unreasonable use of goods.
- § 1794.4. Service contract.
- § 1794.5. Alternative suggestions for repair.
- § 1795. Liability of one, other than manufacturer, making express warranty.
- § 1795.1. Components of air conditioning system.
- § 1795.5. Obligation of distributor or retail seller of used consumer goods on making express warranties: Duration of implied warranties.
- § 1795.6. Tolling the warranty period.
- § 1795.7. Effect of tolling on manufacturer's liability.

*Cal Forms-24:31.*

§ 1792. [Implied warranties: Manufacturer's warranty of merchantability.] 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. [1970 ch 1333 § 1; 1971 ch 1523 § 4, operative January 1, 1972; 1978 ch 991 § 3.] *Cal Jur 3d Consumer and Borrower Protection Laws § 192, Sales § 68; Cal Forms-6:102, 24:1, 24:21; Witkin Summary (8th ed) pp 1138, 1154.*

§ 1792.1. [Manufacturer's implied warranty of fitness for particular purpose] 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. [1970 ch 1333 § 1; 1971 ch 1523 § 5, operative January 1, 1972; 1978 ch 991 § 4.] *Cal Jur 3d Consumer and Borrower Protection Laws § 193, Sales § 68; Witkin Summary (8th ed) pp 1140, 1154.*

**§ 1792.2. [Retailer's or distributor's implied warranty of fitness for particular purpose]** (a) 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.

(b) Every sale of an assistive device sold at retail in this state shall be accompanied by the retail seller's implied warranty that the device is specifically fit for the particular needs of the buyer. [1970 ch 1333 § 1; 1971 ch 1523 § 6, operative January 1, 1972; 1978 ch 991 § 5; 1979 ch 1023 § 2.] *Cal Jur 3d Consumer and Borrower Protection Laws § 193, Sales § 68; Cal Forms-24:1; Witkin Summary (8th ed) p 1140.*

**§ 1792.3. [Waiver of implied warranties]** No implied warranty of merchantability and, where applicable, no implied warranty of fitness shall be waived, except in the case of a sale of consumer goods on an "as is" or "with all faults" basis where the provisions of this chapter affecting "as is" or "with all faults" sales are strictly complied with. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1; Witkin Summary (8th ed) pp 1148, 1150.*

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

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

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

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

(b) In the event of sale of consumer goods by means of a mail order catalog, the catalog offering such goods shall contain the required writing as to each item so offered in lieu of the requirement of notification prior to the sale. [1970 ch 1333 § 1; 1971 ch 1523 § 6.5, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1, 24:11; Witkin Summary (8th ed) p 1148.*

**§ 1792.5. ["As is" sales]** Every sale of goods that are governed by the provisions of this chapter, on an "as is" or "with all faults" basis, made in compliance with the provisions of this chapter, shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness. [1970 ch 1333 § 1; 1971 ch 1523 § 6.5, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1, 24:21; Witkin Summary (8th ed) p 1148.*

**§ 1793. [Express warranties.]** Except as provided in Section 1793.02, 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. [1970 ch 1333 § 1; 1971 ch 1523 § 7, operative January 1, 1972; 1978 ch 991 § 6; 1979 ch 1023 § 3.] *Cal Jur 3d Consumer and Borrower Protection Laws §§ 195, 196; Cal Forms-6:102, 24:1, 24:12; Witkin Summary (8th ed) p 1148.*

**§ 1793.02. [Assistive devices sold at retail: Requisite warranty: Nonexclusiveness of rights and remedies provided.]** (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If



the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be cancelled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

(1) A catalogue or similar sale, as defined in subdivision (n) of Section 1791.

(2) A sale which involves a retail sale price of less than fifteen dollars (\$15).

(3) A surgical implant performed by a physician and surgeon, or a restoration or dental prosthesis provided by a dentist.

(f) The rights and remedies of the buyer

under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections 1793.2 and 1793.3. [1979 ch 1023 § 4; 1982 ch 619 § 2.]

§ 1793.05. [Vehicle manufacturers altering new vehicles into housecars: Warranty responsibility.] Vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer. [1977 ch 873 § 1, operative July 1, 1978.]

§ 1793.1. [Form of express warranties]  
(a) (1) Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth such warranties in simple and readily understood language, which shall clearly identify the party making such express warranties, and which shall conform to the federal standards for disclosure of warranty terms and conditions set forth in the federal Magnuson-Moss Warranty Federal Trade Commission Improvement Act, and in the regulations of the Federal Trade Commission adopted pursuant to the provisions of that act.

(2) Every work order or repair invoice for warranty repairs or service shall clearly and conspicuously incorporate in 10-point bold-face type the following statement either on the face of such work order or repair invoice, or on the reverse side thereof, or on an attachment to the work order or repair invoice: A buyer of this product in California has the right to have this product serviced or repaired during the warranty pe-



riod. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws.

If the required notice is placed on the reverse side of the work order or repair invoice, the face of the work order or repair invoice shall include the following notice in 10-point boldface type: Notice to Consumer: Please read important information on back.

A copy of the work order or repair invoice and any attachment thereto shall be presented to the buyer at the time that warranty service or repairs are made.

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

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

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

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

address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable. [1970 ch 1333 § 1; 1971 ch 1523 § 8, operative January 1, 1972; 1972 ch 1293 § 1; 1980 ch 394 § 1; 1981 ch 150 § 1, effective July 8, 1981; 1982 ch 381 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 196. 197; *Cal Forms-24:1, 24:12; Witkin Summary (8th ed)* p 1277.

**§ 1793.2. [Duty of manufacturer making express warranty; Service and repair facilities; Presumption as to new motor vehicle]**

(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. 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.

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

directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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

(3) A qualified third party dispute resolution process shall be one that complies with



the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

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

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

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles. [1970 ch 1333 § 1; 1971 ch 1523 § 9, operative January 1, 1972; 1976 ch 416 § 2; 1978 ch 991 § 7; 1982 ch 388 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 197, 198, 199; *Cal Forms-24:15, 24:22, 24:23, 24:24; Witkin Summary (8th ed) p 1277.*

**§ 1793.3. [Failure to provide service facility in conjunction with express warranties]** 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 attrib-

utable 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 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 installation, or nature of the nonconformity, the buyer shall give notice of the nonconformity to the retailer. Upon receipt of such notice of nonconformity the retailer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service or repair, or arrange for transporting the goods to its place of business. 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). [1970 ch 1333 § 1; 1971 ch 1523 § 10, operative January 1, 1972; 1976 ch 416 § 3; 1978 ch 991 § 8.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 190, 199, 200; *Cal Forms-24:15, 24:23; Witkin Summary (8th ed) pp 1224, 1278.*

**§ 1793.35. [Replacement of or reimbursement for clothing or consumables]** (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. [1971 ch 1523 § 10.5, operative January 1, 1972; 1978 ch 991 § 8.5.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 201, 202; *Cal Forms-24:37; Witkin Summary (8th ed) pp 1129, 1278.*

**§ 1793.4. [Time for buyer to exercise option for service and repair]** 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. [1970 ch 1333 § 1; 1971 ch 1523 § 11; 1978 ch 991 § 9.] *Cal Jur 3d Consumer and Borrower Protection Laws* § 200; *Cal Forms-24:24; Witkin Summary (8th ed) p 1278.*

**§ 1793.5. [Manufacturer's liability to retailer on failing to maintain service facilities]** Every manufacturer making express warranties who does not provide service and repair facilities within this state pursuant to





subdivision (a) of Section 1793.2 shall be liable as prescribed in this section to every retail seller of such manufacturer's goods who incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods. The amount of such liability shall be determined as follows:

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

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

(c) In the event of reimbursement under subdivision (a) of Section 1793.3, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge. [1970 ch 1333 § 1; 1971 ch 1523 § 2, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 200; Witkin Summary (8th ed) p 1278.*

§ 1793.6. [Manufacturer's liability to independent serviceman performing services or incurring obligations] Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the 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 serviceman 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. [1976 ch 416 § 4.]

§ 1794. [Buyer's right to damages; Measure; Penalty; Attorney's fees] (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. [1970 ch 1333 § 1; 1971 ch 1523 § 13, operative January 1, 1972; 1978 ch 991 § 10; 1982 ch 385 § 1; 1982 ch 2 § 385.] *Cal Jur 3d Consumer and Borrower Protection Laws § 203; Cal Forms-6:102; Witkin Summary (8th ed) pp 1224, 1278.*



§ 1794.1. [Damages recoverable by retail seller and independent serviceman.] (a) Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

(b) Any independent serviceman of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees. [1970 ch 1333 § 1; 1976 ch 416 § 5.] *Cal Jur 3d Consumer and Borrower Protection Laws § 204; Witkin Summary (8th ed) pp 1224, 1278.*

§ 1794.2. [Repealed by Stats 1982 ch 385 § 3.]

§ 1794.3. [Effect of unauthorized or unreasonable use of goods.] The provisions of this chapter shall not apply to any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the goods following sale. [1970 ch 1333 § 1; 1971 ch 1523 § 15, operative January 1, 1972.] *Cal Forms-24:1; Witkin Summary (8th ed) p 1278.*

§ 1794.4. [Service contract.] Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if such contract fully and conspicuously discloses in simple and readily understood language the terms and conditions of such contract. [1970 ch 1333 § 1; 1971 ch 1523 § 16, operative January 1, 1972.] *Cal Forms-24:33.*

§ 1794.5. [Alternative suggestions for repair.] The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter. [1970 ch 1333 § 1.]

§ 1795. [Liability of one, other than manufacturer, making express warranty.] If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer*

*and Borrower Protection Laws § 197; Cal Forms-6:102; Witkin Summary (8th ed) p 1148.*

§ 1795.1. [Components of air conditioning system.] 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. [1971 ch 1523 § 16.5, operative January 1, 1972; 1978 ch 991 § 11.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Witkin Summary (8th ed) p 1129.*

§ 1795.5. [Obligation of distributor or retail seller of used consumer goods on making express warranties: Duration of implied warranties.] 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. [1971 ch 1523 § 17, operative January 1, 1972; 1974 ch 169 § 1; 1978 ch 991 § 12.] *Cal Jur 3d Consumer and Borrower Protection Laws § 205; Cal Forms-24:1, 24:13; Witkin Summary (8th ed) pp 1277, 1278.*

**§ 1795.6. [Tolling the warranty period.]**

(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 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. [1974 ch 844 § 1, operative July 1, 1975; 1980 ch 394 § 2.]

**§ 1795.7. [Effect of tolling on manufacturer's liability.]** Whenever a warranty, express or implied, is tolled pursuant to Section 1795.6 as a result of repairs or service performed by any retail seller, the warranty shall be extended with regard to the liability of the manufacturer to a retail seller pursuant to law. In such event, the manufacturer shall be liable in accordance with the provisions of Section 1793.5 for the period that an express warranty has been extended by virtue of Section 1795.6 to every retail seller who incurs obligations in giving effect to such express warranty. The manufacturer shall also be liable to every retail seller for the period that an implied warranty has been extended by virtue of Section 1795.6, in the same manner as he would be liable under Section 1793.5 for an express warranty. If a manufacturer provides for warranty repairs and service through its own service and repair facilities and through independent repair facilities in the state, its exclusive liability pursuant to this section shall be to such facilities. [1974 ch 844 § 2, operative July 1, 1975.]

## CHAPTER 2

### Standards For Warranty Work

[Added by Stats 1978 ch 991 § 13.]

§ 1796. Duty to install new or used goods.

§ 1796.5. Duty to service or repair new or used goods.

**§ 1796. [Duty to install new or used goods]** Any individual, partnership, corpora-

tion, association, or other legal relationship which engages in the business of installing



new or used consumer goods, has a duty to the buyer to install them in a good and workmanlike manner. [1978 ch 991 § 13.]

§ 1796.5. [Duty to service or repair new or used goods.] Any individual, partnership,

corporation, association, or other legal relationship which engages in the business of providing service or repair to new or used consumer goods has a duty to the purchaser to perform those services in a good and workmanlike manner. [1978 ch 991 § 13.]

CHAPTER 3

Mobilehome Warranties

§ 1797. Mobilehomes covered by warranty.

§ 1797.1. "Mobilehome."

§ 1797.2. Application of warranty to manufacturer and dealer.

§ 1797.3. Required written warranty: Contents.

§ 1797.4. Additional rights and privileges: Prohibited waiver.

§ 1797.5. Display of notice of warranty.

*Cal Forms-24:1.*

§ 1797. [Mobilehomes covered by warranty.] All new mobilehomes and manufactured homes sold to a buyer shall be covered by the warranty set forth in this chapter. [1971 ch 1492 § 1; 1982 ch 730 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

§ 1797.1. ["Mobilehome."] As used in this chapter, "mobilehome" is defined pursuant to Section 18008 of the Health and Safety Code and "manufactured home" is defined pursuant to Section 18007 of the Health and Safety Code. Both shall include, in addition to the structure thereof, the plumbing, heating, and electrical systems and all appliances and other equipment installed or included therein by the manufacturer or dealer. [1971 ch 1492 § 1; 1982 ch 730 § 2.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

§ 1797.2. [Application of warranty to manufacturer and dealer.] The warranty provided for in this chapter shall apply to the manufacturer of the mobilehome or the manufactured home as well as to the dealer who sells the mobilehome or the manufactured home to the buyer. [1971 ch 1492 § 1; 1982 ch 730 § 3.] *44 Cal Jur 3d Mobile Homes § 12.*

§ 1797.3. [Required written warranty: Contents.] The mobilehome/manufactured home warranty from the manufacturer or dealer to the buyer shall be set forth in a separate written document entitled "Mobilehome/Manufactured Home Warranty," shall be delivered to the buyer by the dealer at the time the contract of sale is signed, and shall contain, but is not limited to, the following terms:

(a) That the mobilehome or manufactured home is free from any substantial defects in materials or workmanship.

(b) That the manufacturer or dealer or both shall take appropriate corrective action at the site of the mobilehome or manufactured home in instances of substantial defects in materials or workmanship which become evident within one year from the date of delivery of the mobilehome or manufactured home to the buyer, provided the buyer or his or her transferee gives written notice of such defects to the manufacturer or dealer at their business address not later than one year and 10 days after date of delivery.

(c) That the manufacturer and dealer shall be jointly and severally liable to the buyer for the fulfillment of the terms of warranty, and that the buyer may notify either one or both of the need for appropriate corrective action in instances of substantial defects in materials or workmanship.

(d) That the address and the phone number of where to mail or deliver written notices of defects shall be set forth in the document.

(e) That the one-year warranty period applies to the structures, plumbing, heating, electrical systems and all appliances and other equipment installed and included therein by the manufacturer or dealer.

(f) That while the manufacturers of any or all appliances may also issue their own warranties, the primary responsibility for appropriate corrective action under the warranty rests with the dealer and manufacturer, and the buyer should report all complaints to the dealer and manufacturer ini-



tially. [1971 ch 1492 § 1; 1973 ch 807 § 1; 1982 ch 730 § 4.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14, 24:15, 24:26.*

**§ 1797.4. [Additional rights and privileges: Prohibited waiver.]** The warranty under this chapter shall be in addition to and not in derogation of all other rights and privileges which such buyer may have under any other law or instrument. The manufacturer or dealer shall not require the buyer to waive his rights under this chapter and any such waiver shall be deemed contrary to

public policy and shall be unenforceable and void. [1971 ch 1492 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

**§ 1797.5. [Display of notice of warranty.]** Every dealer shall display a notice of reasonable size stating the existence of a one-year warranty and a sample copy of such warranty. The notice shall be posted in each area where purchase orders and conditional sales contracts are written. [1974 ch 1286 § 1, operative July 1, 1975.] *44 Cal Jur 3d Mobile Homes § 12.*





NEWS FROM ASSEMBLYWOMAN

**SALLY  
TANNER**

60th Assembly District

FOR IMMEDIATE RELEASE

July 18, 1983

SACRAMENTO - ASSEMBLYWOMAN SALLY TANNER (D. El Monte) ANNOUNCED TODAY THAT JULY 7 MARKED THE FIRST ANNIVERSARY OF THE SIGNING OF CALIFORNIA'S AUTOMOBILE "LEMON" LAW, WHICH SHE AUTHORED. THAT LAW, WHICH BECAME EFFECTIVE LAST JANUARY, GIVES NEW CAR BUYERS IN CALIFORNIA STRONGER PROTECTION AGAINST BEING LEFT OWNING A NEW CAR THAT CANNOT BE FIXED WITHIN A REASONABLE TIME - I.E. A "LEMON."

THE "LEMON" LAW PROVIDES THAT DURING THE FIRST YEAR OR 12,000 MILES AFTER THE PURCHASE OF A NEW MOTOR VEHICLE, EITHER FOUR OR MORE UNSUCCESSFUL REPAIRS OF THE SAME DEFECT OR A CUMULATIVE TOTAL OF MORE THAN 30 DAYS OUT OF SERVICE FOR REPAIRS OF ONE OR MORE DEFECTS WILL BE PRESUMED TO BE REASONABLE, AND THUS TRIGGER THE BUYER'S RIGHT TO A REFUND OR REPLACEMENT VEHICLE.

"I AM VERY GRATIFIED WITH THE FACT THAT MY LEGISLATION HAS BEEN USED AS A MODEL AND A CATALYST FOR SIMILAR LEGISLATION IN MANY OTHER STATES," TANNER STATED. A RECENT ARTICLE IN THE CHRISTIAN SCIENCE MONITOR STATES THAT, IN ADDITION TO CALIFORNIA, ABOUT TEN OTHER STATES NOW HAVE "LEMON" AUTO LAWS, WITH OTHER STATES SOON TO FOLLOW.

"ALTHOUGH OUR LAW HAS ONLY BEEN IN EFFECT SINCE JANUARY," TANNER SAID, "IT DOES SEEM TO BE HAVING A DEFINITE EFFECT IN THE WAY NEW CAR PROBLEMS ARE BEING TREATED BY MANUFACTURERS AND THEIR DEALERS. REPETITIVE OR ON-GOING PROBLEMS ARE BEING "RED-FLAGGED" MUCH SOONER THAN BEFORE, AND THE MANUFACTURER ITSELF IS BEING DIRECTLY INVOLVED IN RESOLVING THEM AT AN EARLIER POINT."

TANNER NOTED THAT MANY PEOPLE HAVE BEEN CONTACTING HER OFFICE AND STATE AGENCIES INCLUDING THE DEPARTMENT OF CONSUMER AFFAIRS AND THE DEPARTMENT OF MOTOR VEHICLES TO FIND OUT ABOUT THE LAW AND HOW IT APPLIES TO THEMSELVES.

-continued-

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El Monte, CA 91731  
(213) 442-9100

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-24

"AS WE MOVE FORWARD, I BELIEVE THE NEW LAW WILL HAVE A GREATER EFFECT IN THE NEW CAR MARKETPLACE," NOTED TANNER. "THE GOAL IS TO PROMOTE HIGHER QUALITY IN NEW CARS AND A PROCESS WHICH PROVIDES THE BUYER WITH WHAT THEY PAID FOR - A CAR THAT WORKS PROPERLY. THIS IS JUST THE BEGINNING."

# # # #



ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE 7-6-82
BILL NO. AB 1787	AUTHOR Tanner

Vote—Senate \_\_\_\_\_ Unanimous

Ayes— 28  
 Noes— 4 - Richardson, Seymour, Schmitz, Speraw

Vote—Assembly \_\_\_\_\_ Unanimous

Ayes— 48  
 Noes— 22 - Baker, Costa, Duffy, Filante, Floyd, Frazee, Frizzelle, Hallett, Ivers, Johnson, Kelley, Konnyu, La Follette, Lancaster, Lewis, Marguth, Naylor, Rogers, Sebastini, D. Stirling, Wright, Wyman

AB 1787 - Tanner

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle (excluding motorcycles, motorhomes, and off-road vehicles) to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process.

SPONSOR

Author

SUPPORT

Department of Consumer Affairs  
 The Senate Democratic Caucus analysis contains a list of proponents.

Recommendation	APPROVE
----------------	---------

LEGISLATIVE INTENT SERVICE (800) 666-1917



FE-1



OPPOSITION

Automobile Importers of America (per Senate Democratic Caucus analysis)

STATE FISCAL IMPACT

None

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



PE-2

OWEN K KUNS  
RAY H WHITAKER  
CHIEF DEPUTIES

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STANLEY M LOURIMORE  
EDWARD K PURCELL  
JOHN T STUDEBAKER

JOHN CORZINE  
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JOHN A. MOGER  
VERNE L. OLIVER  
EUGENE L. PAINE  
MARGUERITE ROTH  
JERRY J. RUIZ  
MICHAEL B. SALERNO  
MARY SHAW  
WILLIAM K. STARK  
MARK FRANKLIN TERRY  
JEFF THOM  
RICHARD B. WEISBERG  
DANIEL A. WEITZMAN  
THOMAS D. WHELAN  
CHRISTOPHER ZIRKLE  
DEPUTIES

Sacramento, California

June 29, 1982

Honorable Edmund G. Brown Jr.  
Governor of California  
Sacramento, CA

Assembly Bill No. 1787

Dear Governor Brown:

Pursuant to your request we have reviewed the  
above-numbered bill authored by Assemblywoman Tanner  
and, in our opinion, the title and form are sufficient and  
the bill, if chaptered, will be constitutional. The digest  
on the printed bill as adopted correctly reflects the views  
of this office.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

By *John T. Studebaker*  
John T. Studebaker  
Principal Deputy

JTS:AB

Two copies to Honorable Sally Tanner,  
pursuant to Joint Rule 34.

(800) 666-1917  
LEGISLATIVE INTENT SERVICE



PE-3



1020 N STREET, SACRAMENTO, CALIFORNIA 95814



# ENROLLED BILL REPORT

AGENCY State & Consumer Services	BILL NUMBER AB 1787
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs	AUTHOR Tanner

SUBJECT: New Car Warranties

HISTORY, SPONSORSHIP & RELATED LEGISLATION:

AB 1787 would amend California's existing consumer product warranty law as it pertains to new automobiles.

In December 1979, the Assembly Committee on Labor, Employment and Consumer Affairs held a two-day interim hearing on the subject of automobile warranties. A high level of consumer frustration with defective new cars and warranty performance was expressed, specifically regarding the practical ineffectiveness of current law in response to repeated repairs and problems with new cars. AB 2705 (Tanner) was introduced in 1980 in response to the problem, but was defeated in the Senate Judiciary Committee by one vote.

AB 1787 was introduced March 27, 1981. It passed from the Assembly on June 15, 1981, as amended, and, after extensive compromise efforts between various consumer and industry groups, passed the Senate Judiciary Committee (6-0).

ANALYSIS

A. SPECIFIC FINDINGS

Current law states that manufacturers or their representatives must replace a product or reimburse the buyer after "a reasonable number of attempts" to service or repair the product, without criteria to determine "a reasonable number of attempts."

AB 1787 would establish a reasonable number of attempts to have been undertaken to conform a new vehicle (excluding motorcycles, motorhomes, and off-road vehicles) to the applicable warranties, if within one year or 12,000 miles (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since delivery to the buyer.

AB 1787 would further provide that if the manufacturer or dealer has a qualified third party dispute resolution process, as defined in the bill, and if the buyer received timely notification of the availability of the process, the provisions defining a reasonable number of attempts to repair may not be asserted by the buyer until after the buyer has

(cont.)

RECOMMENDATION:

*SLGN*

*PE-4*

DEPARTMENT DIRECTOR <i>Richard B. ...</i>	DATE <i>6/19/81</i>	AGENCY SECRETARY <i>Edna ...</i>	DATE <i>7-2783</i>
--	------------------------	-------------------------------------	-----------------------

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first resorted to the dispute resolution process.

B. FISCAL IMPACT

None on this Department.

C. VOTE

Assembly: 58-6  
Senate: 28-4

D. HUMAN & CIVIL RIGHTS IMPACT

Warranty legislation was enacted to improve the adequacy of information available to consumers, prevent deception, promote choice, and improve competition and service in the marketing and repair or replacement of consumer products. AB 1787 seeks to protect the interests of participants in a retail transaction in which thousands of dollars are involved and basic means of transportation are inhibited.

E. RECOMMENDATION: Sign

AB 1787 provides California consumers with a reasonable and equitable remedy for a major problem. Current law is not useful to consumers who purchase defective vehicles because of the often limitless opportunities afforded dealers and manufacturers to correct defects. The standards proposed in AB 1787 offer a reasonable remedy to car buyers and will encourage improved quality control by manufacturers and improved repair service by dealers.



ENROLLED BILL REPORT

Business and Transportation Agency

DEPARTMENT <b>Motor Vehicles</b>	AUTHOR Tanner	BILL NUMBER AB 1787
SUBJECT Warranties		

SUMMARY: Requires the manufacturer to replace a vehicle or reimburse the buyer if a nonconformity is not repaired after a reasonable number of attempts.

DETAILED ANALYSIS: The Civil Code currently requires a manufacturer to replace merchandise or reimburse the buyer if after a reasonable number of attempts to repair the item it fails to conform to the warranty. However, there is no specific definition of "reasonable number of repair attempts" and in the case of new motor vehicles, replacement or total reimbursement is rare.

This bill would require a manufacturer to replace a new motor vehicle or reimburse the buyer if the vehicle did not conform to the warranty after a reasonable number of attempts have been made to correct a non-conformity.

For purposes of this bill, "new motor vehicle" would mean a new motor vehicle which is used primarily for personal, family, or household purposes, but would not include motorcycles, motorhomes, or off-highway vehicles. The bill would require the presumption that a "reasonable number of attempts" have been made to conform a new motor vehicle to the warranty if, within one year from delivery of the vehicle to the buyer or 12,000 miles, whichever occurs first, either the same nonconformity has been subject to repair four or more times and the buyer has at least once notified the manufacturer of the need for repair, or the vehicle is out of service, as specified, for a cumulative total of more than 30 days. The term "nonconformity" would mean a nonconformity that substantially impairs the use, value, or safety of the new motor vehicle.

Before a manufacturer would be required to replace or refund a vehicle's purchase price, the bill would require the matter to be referred to a qualified third party dispute resolution process, as specified, if one exists. The requirements for the dispute resolution process would include the yearly submission of a report to the Department of Motor Vehicles on the annual audit required by Federal Trade Commission regulations on informal dispute resolution procedures.

COST ANALYSIS: No anticipated fiscal impact on this department. Based upon information obtained from the Federal Trade Commission, the Department of Motor Vehicles has determined the annual audit report specified in this measure would not require any action by this department. The Department of Motor Vehicles would only be a repository for the reports.

LEGISLATIVE HISTORY: This bill is sponsored by the author as a result of interim hearings conducted in 1979. The vote on this measure was Assembly, Ayes 48 - Noes 22, Senate, Ayes 28 - Noes 4.

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RECOMMENDATION			
SIGN <i>C. Dargatzis for W. Alessis</i>			
Department	Date	Agency	PE-6
KS:mc 7-6-82	7/7/82	<i>W. Alessis</i>	7.7.8.785

RECOMMENDATION: SIGN

The purchase of a new motor vehicle represents a major investment for most people. This measure should provide a degree of protection for that investment which is not presently available.

For further information, please contact:

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

For technical information, please contact:

Roger Hagen, Chief, Division of Registration Services  
and Compliance Enforcement  
Day Phone: 445-6340  
Evening Phone: 1-652-6161

Leonard Bleier, Legislative Liaison Officer  
Day Phone: 445-9492  
Evening Phone: 448-3190



THIRD READING

<p style="text-align: center;"><b>SENATE DEMOCRATIC CAUCUS</b></p> <p style="text-align: center;">SENATOR PAUL B. CARPENTER Chairman</p>	<p>Bill No.: AB 1787 Amended: 6-3-82</p> <p>Author: Tanner (D)</p> <p>Vote Required: Majority</p> <p>Assembly Floor Vote: 48-22</p>
--	---

SUBJECT: Warranties

POLICY COMMITTEE: Judiciary

AYES: (6) Doolittle, Robbins, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill provides that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles whichever occurs first (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; and the buyer after being notified by the manufacturer of the requirement has at least once directly notified the manufacturer of the need for the repair of the nonconformity or, (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 days since the delivery of the vehicle to the buyer. The bill provides that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill also provides that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

FISCAL EFFECT: No state cost.

PROPONENTS: (Verified by author 6-2-82)

Los Angeles City Attorney  
KPIX  
KABC  
Long Beach Independent Press-Telegram  
Santa Barbara News Press  
State Consumer Advisory Council

PS-8

CONTINUED

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PROPOSERS, continued:

Department of Consumer Affairs  
California Consumer Affairs Association  
Cal-Pirg San Diego  
National Council of Senior Citizens  
Motor Voters, San Diego  
AFL-CIO, State Federation  
State Building and Construction Trades Council of California  
United Steelworkers of America  
Baldwin Park Chamber of Commerce  
Santa Cruz County District Attorney  
Consumer Union, San Francisco  
San Francisco Consumer Action  
County of Los Angeles, Department of Consumer Affairs  
California Federation of Women's Clubs, Orange District  
Consumer Aid of Shasta County  
Colusa County Board of Supervisors  
Stanislaus County, Office of Consumer Affairs  
Los Angeles Private Investigation & Patrol Service  
California Teamsters Public Affairs Council  
Center for Auto Safety  
Chico Consumer Protection Agency  
Lemon-Aid, San Diego  
Consumer Federation of California  
Legal Aid Society of San Mateo County  
Consumer Coalition

(Ford, Chrysler, General Motors, California Auto Dealers Association, Motor Vehicle Manufacturers Association, American Honda Motor Co., California Conference of Machinists are neutral)

OPPOSERS:

Automobile Importers of America

ARGUMENTS IN SUPPORT:

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.





388  
A  
Legislative  
AC

**S & T**

1625 SILVERWOOD TERRACE  
LOS ANGELES, CALIFORNIA 90026  
(213) 660-4365

AB 1787

July 4, 1982

Gov. Edmund Brown, Jr.  
State Capitol  
Sacramento, California 95814

Dear Governor Brown:

I was very pleased to have the opportunity to talk to you the other day at Jim Daniel and Ed Taylor's home. I am very supportive of your campaign for the U.S. Senate. There is a crying need for fair representation of all groups in Washington, as you so ably spoke.

I was also pleased to discuss with you my support of the Sally Tanner "Lemon Law" for consumer protection of automotive problems. As a consumer with a current and on-going car problem that the new law will not help, I feel strongly that consumer laws such as this are important to Californians.

I hope that this necessary legislation is presented to you soon for a quick implementation.

I hope that I can be of further help to you during the coming general election.

Sincerely,



Alex Smariga  
1625 Silverwood Terrace  
Los Angeles, California 90026

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P2-10

ASSEMBLY ADDRESS  
FLOOR 4146 STATE CAPITOL  
SACRAMENTO 95814  
916-445-7781

LEGISLATIVE OFFICE ADDRESS  
1700 VALLEY BOULEVARD  
SUITE 106  
EL MONTE, CA 91731  
(213) 442-9100



# Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT  
CHAIRWOMAN

COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

COMMITTEES  
CONSUMER PROTECTION AND  
TOXIC MATERIALS  
EDUCATION  
GOVERNMENTAL ORGANIZATION  
LABOR AND EMPLOYMENT  
SUBCOMMITTEES  
AMUSEMENT RIDE SAFETY  
EDUCATIONAL REFORM  
CHILD LABOR  
SELECT COMMITTEE  
FAIR EMPLOYMENT PRACTICES  
MEMBER  
JOINT COMMITTEE ON THE ARTS  
HAZARDOUS WASTE MANAGEMENT  
COUNCIL

June 30, 1982

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

RE: AB 1787 - Consumer Warranties  
on New Motor Vehicles - Refund  
or Replacement Remedy

Dear Governor Brown:

Assembly Bill 1787 has been passed by the Legislature and is before you for your approval and signature.

For years one of the most frustrating and expensive problems experienced by California's consumers has been the inability to obtain satisfactory redress when the new cars they purchase fail to operate properly and are not repaired despite repeated or sustained attempts by the manufacturer or its dealers. While our present Song-Beverly Consumer Warranty Act gives the buyer a right to obtain a refund or replacement from the manufacturer if a consumer product, including a motor vehicle, cannot be successfully repaired after a "reasonable number of attempts", it has not been effective in resolving this serious problem for new car purchasers.

AB 1787, often referred to as the "lemon" automobile bill, would amend this provision of the Song-Beverly Act as it relates to specified new motor vehicles and provide objective criteria for determining when the "reasonable" number of repairs standard has been reached and the buyer has the right to a refund or replacement.

-continued-

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28-11

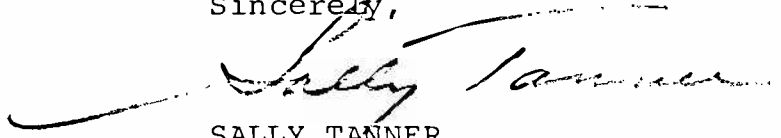
The bill also provides, however, that before a buyer could assert this presumption, he or she must first utilize informal dispute resolution programs to resolve the problem, if such a program exists and meets criteria specified in the bill.

AB 1787 represents the culmination of over 3 years of legislative effort to provide more meaningful protection for new car buyers whose cars don't work and can't be fixed within a reasonable time. The provisions of the bill will help not only the consumer car buyer, but also the auto industry, by providing a means for restoring buyer confidence in, and sales of, new motor vehicles.

AB 1787 is supported by a long list of consumer organizations and leaders from all over California. It has also been supported by a great many individual consumers, hundreds of whom have written to me about their new car problems.

I respectfully request that you approve AB 1787 and sign it into California law.

Sincerely,



SALLY TANNER  
Assemblywoman, 60th District

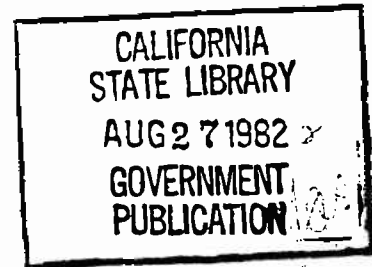
ST:mb



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no. 1  
C. 2

HEARING ON

# "NEW AUTOMOBILES - CONSUMER DISPUTE RESOLUTION PROGRAMS"



Sacramento, California  
February 9, 1982

## MEMBERS

Assemblywoman Sally Tanner, Chairman

Assemblyman Peter Chacon  
Assemblyman Dave Elder  
Assemblyman Richard Katz  
Assemblyman Ernest Konnyu  
Assemblyman Don Sebastiani  
Assemblyman Byron Sher  
Assemblywoman Cathie Wright

Jay DeFuria  
Consultant

Mary Vasos  
Committee Secretary

No. 930

LIS-15

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ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

HEARING ON

"NEW AUTOMOBILES - CONSUMER DISPUTE RESOLUTION PROGRAMS"

Sacramento, California  
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Assemblyman Byron Sher  
Assemblywoman Cathie Wright

STAFF

Jay DeFuria  
Consultant

Mary Vasos  
Committee Secretary

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- XII. Letter sent by Attorney Daniel L. Abbott - Barnberg, Abbott and James
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"NEW AUTOMOBILES - CONSUMER DISPUTE RESOLUTION PROGRAMS"

SACRAMENTO, CALIFORNIA

FEBRUARY 9, 1982

CHAIRPERSON: ASSEMBLYWOMAN TANNER



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CHAIRWOMAN TANNER: Alright. We may just as well get started. The secretary will call the roll, please?

SECRETARY: Assemblyman Chacon,

ASSEMBLYMAN CHACON: Here.

SECRETARY: Assemblyman Elder, Assemblyman Katz, Assemblyman Konnyu, Assemblyman Sebastiani, Assemblyman Sher, Assemblywoman Wright, Assemblywoman Tanner.

CHAIRWOMAN TANNER: Good afternoon. We are here today in a fact-finding hearing to learn about the scope, operation, and success of the various dispute resolution programs which the automobile industry has established to resolve new car problems and consumer complaints.

A new car purchase is the second largest investment a consumer will make and yet it is one of the most frequent sources of consumer complaints. In the course of hearings on my AB 1787, known as the "Lemon" automobile bill, the automobile industry repeatedly suggested that new legislative remedies for consumers with complaints about new automobiles were unnecessary. The industry has pointed to their own internal efforts, in particular, their dispute or arbitration boards as a better solution.

Since there wasn't sufficient time during the regular committee hearings on the bill to fully discuss and explore the ramifications of the dispute programs, we scheduled this hearing in order to give everyone an opportunity, including customers and industry, an opportunity to speak. So what we will do is proceed with our agenda and we have to end this hearing by 4 o'clock so



STATE OF CALIFORNIA  
DEPARTMENT OF

**Consumer  
Affairs**

STATE OF CALIFORNIA  
APR 23 1984

GOVERNMENT  
SERVICES

# ANNUAL REPORT 1982-83



**George Deukmejian**  
Governor

**Shirley Chilton**  
Secretary, State and  
Consumer Services Agency

**Marie Shibuya-Snell**  
Director

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THE DEPARTMENT OF CONSUMER AFFAIRS

Description and History

The Department of Consumer Affairs is organized to promote and protect the public interest by regulating licensed professionals and vocations, and by providing consumer representation, education, information, complaint mediation and other services to California consumers. Licensing over 1.8 million persons and firms, and responding to tens of thousands of consumer complaints annually, the department has the lead responsibility in the state for consumer protection and representation.

The department was established by the Legislature through the Consumer Affairs Act of 1970 and subsequent implementing legislation in 1971. It succeeded the Department of Professional and Vocational Standards, which had been operating since 1929.

The department houses and oversees the activities of 39 regulatory boards, bureaus, committees and a commission, which license or otherwise regulate the activities of professions and occupations ranging from accountants and auto repair shops to doctors, pharmacists and contractors.

Function

By establishing the department through the Consumer Affairs Act, the Legislature sought to promote and protect the interests of Californians as consumers.

To advance these purposes, the Legislature instructed the Department of Consumer Affairs to facilitate the proper functioning of the free enterprise market economy (Business and Professions Code Section 301 et seq.) by:

1. Educating and informing consumers to ensure rational consumer choice in the marketplace;
2. Protecting consumers from fraudulent or deceptive practices in the sale of goods and services;
3. Fostering competition; and
4. Promoting effective representation of consumers' interests in all branches and levels of government.

In addition to the various statutory mandates of the boards to investigate complaints in their respective areas of concern, the



Consumer Affairs Act charges the director of the department with the responsibility to investigate consumer complaints relating to:

1. Unfair methods of competition and unfair or deceptive acts and practices undertaken by any person in the course of conduct of any trade or commerce;
2. The production, distribution, sale and lease of goods and services undertaken by any person which may be injurious to the public health, safety or welfare;
3. Violations of law relating to businesses and professions licensed by any board within the department;
4. Any other matters related to the purposes and functions of the department.

To carry out these charges, the director of the Department of Consumer Affairs has a broad range of duties and powers relating to:

1. Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.
2. Represent consumers' interests before federal and state legislative hearings and executive committees.
3. Assist, advise and cooperate with federal, state and local agencies and officials to protect and promote the interests of the consumer.
4. Study, investigate, research and analyze matters affecting the interests of consumers.
5. Hold public hearings, subpoena witnesses, take depositions, compel the production of books, papers, documents and other evidence, and call upon other state agencies for information.
6. Propose and assist in the creation and development of consumer education programs.
7. Promote ethical standards of conduct for businesses and consumers, and undertake activities to encourage public responsibility in the production, promotion and sale or lease of consumer goods and services.
8. Advise the Governor and Legislature on all matters affecting the interests of consumers.





9. Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.
10. Maintain contact and liaison with consumer groups in California.
11. Establish a comprehensive, consumer-related library.
12. Intervene in proceedings affecting California consumers before any state or federal commission, department, agency or court.
13. Initiate legal proceedings in the interests of consumers.

### Structure

The Consumer Affairs Act requires the department to be the consumer advocate in state government and to administer the statutorily established licensing and regulatory programs. Part of the State and Consumer Services Agency, the department consists of an executive staff, administrative offices and divisions, a consumer services division, and regulatory boards, bureaus, committees and a commission. An organization chart of the department is provided on page 7 of this report.

#### 1. Role of the director

The executive control of the Department of Consumer Affairs rests with the director and his/her chief deputy director and deputy director. The director, chief deputy director and deputy director hold positions that are exempt from civil service.

The chief deputy director, appointed by the Governor, and the deputy director, appointed by the director, have management responsibility for the Divisions of Administration and Investigation. In addition, the chief deputy and deputy director monitor the activities of the boards, bureaus, committees and the commission. Every power and duty of the director may be exercised or performed in the director's name by a deputy director.

All major departmental policy matters come to the attention of the director. The legislative and public relations functions and relations with the State and Consumer Services Agency, other state agencies, the Governor's Office, the Legislature, and other levels of government concerning departmental programs, policies, investigations



and projects are under the supervision and direction of the director.

The director is responsible for reviewing and submitting the department's budget to the Governor.

The director may, with the approval of the Governor, arrange and classify the work of the department, and consolidate, abolish or create divisions. The director may adopt rules and regulations needed to govern the activities of the department, and may assign to its officers and employees such duties as he/she deems appropriate. For the betterment of public service, the director may reassign duties to the employees under the chief of any division as he/she sees deems appropriate.

The director may employ investigators, inspectors or deputies to investigate or prosecute violations of laws enforced by the department, including many of its regulatory agencies. This investigatory power is exercised by the department's Division of Investigation.

Non-jurisdictional complaints are handled by the Division of Consumer Services. Boards must report complaint patterns to the director.

While complaint processing is facilitated by referral to the appropriate agencies, the director may assume an advocate's role for California consumers, either through establishing policy or taking legal action to enhance the resolution of consumer complaints.

The director may also investigate the work of the agencies in the department and may obtain a copy of all records and full and complete data in all official matters in their possession or in the possession of their members, officers or employees, except for examination questions prior to submission to applicants at scheduled examinations.

## 2. Administrative offices and divisions

To manage the broad responsibilities conferred by the Consumer Affairs Act, the department contains the Division of Administration, the Division of Investigation, the Internal Audit Office and the Chief Counsel's Office.

## 3. Advisory Council

The Consumer Advisory Council was created by the Consumer Affairs Act to make recommendations to the director,



Governor and Legislature regarding legislation and to conduct studies of consumer issues.

1. Division of Consumer Services

The Division of Consumer Services has the major responsibility for carrying out the Consumer Affairs Act of 1970. The division performs its functions through six units: Complaint Assistance, Consumer Liaison, Legal Services, Legislative, Research and Special Projects, and the Tax Preparer's Program.

5. Regulatory boards, bureaus, commission and committees

There are 39 boards, bureaus, committees and a commission in the department. These organizations are charged with testing, licensing, registering and regulating more than a million professionals and occupations from a diversity of fields including healing arts, fiduciary, design and construction, and business and sanitation.

A list of the professions licensed by each board, bureau, committee and commission is provided on page 139 of this report.

Each of the department's boards and licensing committees are composed of:

- public members (non-licensees)
- professional members who are licensed by the board or committee.

The advisory boards to the bureaus are also composed of public and professional members.

The Board of Accountancy and the 15 healing arts boards are composed of one-third public members and two-thirds professional members. The rest of the department's boards and committees are composed of a majority of public members.

All board members are appointed by the Governor, with the exception of two public members per board, one of whom is appointed by the Senate Rules Committee and the other by the Speaker of the Assembly.

The bureaus are under the administrative authority of the director, with a chief appointed by the Governor. Policy decisions for the bureaus are made by the bureau chief with the consent of the director. Each bureau has an advisory board to advise the chief on technical matters and to provide input on policy decisions.



The boards, committees and the commission are basically autonomous agencies with direct regulatory powers. They appoint executive officers to administer their programs and make their own policy decisions.

Within their respective statutory and administrative authorities, the boards, bureaus, committees and the commission are responsible for setting licensing standards, holding meetings, establishing rules and regulations, preparing and conducting examinations, and issuing licenses. To assure professional, statutory and regulatory compliance, they have the authority to inspect, investigate and bring disciplinary action for violations. Citations may be issued and hearings held for license denial, suspension, probation or revocation.

Board, commission, and committee decisions on setting standards, conducting examinations, passing candidates and revoking licenses are not subject to the director's review and are final if within their legal power. However, all activities may be reviewed by the director for criticism and comment.

Proposed rules and regulations (other than those relating to examinations and licensure qualifications) and fee changes must be submitted to the director for review and approval. They may be disapproved if they are injurious to the public health, safety or welfare. The director's decision may be reversed by a unanimous vote of the board, commission or committee.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



## LEGISLATIVE UNIT

The statutory mandates guiding the Division of Consumer Services' legislative efforts are to "recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers" and to "advise the Governor and Legislature on all matters affecting the interests of consumers." (Sections 310 (a) and (b) of the Business and Professions Code.) The Legislative Unit functions to carry out these objectives.

The Consumer Affairs Act establishes fundamental priorities for the issues that the Legislative Unit must address. This includes legislation that advances the interests of consumers by promoting the proper functioning of the free market economy through four principal means: education and information, protection of consumers from unfair and deceptive business practices, fostering competition, and encouraging consumer participation in government.

To accomplish these functions, the unit engages in a variety of activities to identify and communicate consumer needs. These include:

1. Initiation and development of legislative proposals.
2. Analysis of bills proposed in the Legislature which have significant impact on consumers.
3. Representation before legislative and administrative bodies.
4. Communication with federal and state agencies.
5. Provision of information to consumer, business and law enforcement groups on consumer legislation and related issues.
6. Assistance to legislators with their constituents' consumer problems.

### SIGNIFICANT ACCOMPLISHMENTS/ACTIVITIES DURING FISCAL YEAR 82/83

1. Legal activities
  - Provided testimony at a Public Utilities Commission (PUC) hearing, which resulted in the denial of a gas transportation agreement between Pacific Gas & Electric Company (PG&E) and Chevron Oil Corporation.



The PUC cited the testimony provided by the Legislative Unit staff as the rationale for its decision in denying this agreement, which should have ratepayers \$100 million.

Citing the department's brief in the same proceeding, the PUC deferred approval and expressed concern about the facility change in the PG&E/Chevron Oil contract. According to figures provided in the department's brief, these changes would cost ratepayers a minimum of \$40 million a year for the foreseeable future.

- Presented arguments in a PUC consolidated application mechanism proceeding involving Southern California Gas Company, which had requested an increase in natural gas rates from \$.34 to \$.60 per therm. The PUC decision was consistent with arguments by the unit and approved a substantially smaller rate increase, from \$.34 to \$.40 per therm.
- Submitted two briefs to the United States Supreme Court involving the repricing of natural gas supplied to California by the state's major interstate pipeline gas companies. This is one of the few gas cases taken for review by the Court since 1978. If the Court is persuaded by the division's brief to overturn an adverse lower court's opinion, California's industrial, residential and commercial users of natural gas will save \$200 million a year. The Court's decision is expected in the spring of 1983.

## 2. Legislative activities

Due to the reorganization of the Department of Consumer Affairs during fiscal year 1982/83, the department did not sponsor legislation. However, it assisted in the development of such bills as AB 1095, AB 1183 and AB 1993 (described below).

The unit followed 477 bills during fiscal year 1982/83: 287 of these bills were followed during the 1981-82 Legislative Session and 190 bills were followed during the 1983-84 Legislative Session.

The unit analyzed 181 bills during fiscal year 1982/83: 136 bills were analyzed during the 1981-82 Legislative Session and 45 were analyzed during the 1983-84 Legislative Session.



L. Toxic materials and indoor air

1981-82 Legislative Session

- AB 2376 (Deddeh) Air Quality: Mobilehomes  
Chapter 719, Statutes of 1982

Requires the Department of Health Services to conduct a research and information program on toxics, including developing methods for measuring formaldehyde emissions in mobilehomes. Also requires the department to make a recommendation regarding the appropriate level and tests for formaldehyde vapors in new mobilehomes.

- AB 3200 (Tanner) Indoor Air Quality  
Chapter 1026, Statutes of 1982

States various legislative findings and declarations on the indoor environment. The findings emphasize the significance of the indoor environment, the necessity of researching this topic, and charges the Department of Health Services as the agency responsible for conducting research and making policy recommendations on the subject.

M. Warranties

1981-82 Legislative Session

- AB 1787 (Tanner) Automobile Warranties: "Lemon Bill"  
Chapter 388, Statutes of 1982

To existing warranty law, adds the presumption that a reasonable number of attempts have been undertaken to repair a new motor vehicle if, within the first year or 12,000 miles, the same nonconformity has undergone repairs four or more times and the buyer has notified the manufacturer of the need for repair, or the vehicle is out of service for repairs for a cumulative total of more than 30 calendar days. This law does not apply to motorcycles, motorhomes and off-road vehicles.

N. Miscellaneous

1983-84 Legislative Session

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*Preliminary Report*

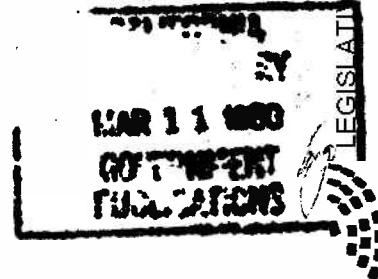
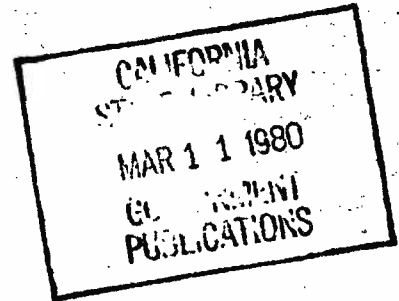
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ASSEMBLY LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS COMMITTEE

HEARING ON

# CONSUMER PROTECTION IN THE SALE OF NEW AND USED CARS

San Diego, California  
December 14-15, 1979



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Bill Lockyer, Chairman

Dave Elder  
Jim Ellis  
Gerald N. Felando  
Jack Fenton  
Elihu Harris  
J. Robert Hayes

Alister McAlister  
Dave Stirling  
Sally Tanner  
Maxine Waters  
Phillip D. Wyman  
Bruce Young

Consultants

Britton McFetridge

Greg Schmidt

Steve Holloway

Maria Husum, Committee Secretary



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CHAIRMAN BILL LOCKYER: The Committee on Labor, Employment and Consumer Affairs convenes today to study problems of significant and sometimes emotional concern to California consumers - the problems that arise in the sale of new and used cars. Obviously, we're people inexorably wedded to our cars. In this state there are twelve and a half million automobiles alone, not including motorcycles, trucks, dune buggies, and other gadgets. With incredible distances and very little mass transit, ownership or access to a car is essential. We pay a price, however, for the mobility we enjoy, not the least of which is the fear and loathing we experience when making a significant financial commitment to purchase an auto. Everyone in the room knows of that special trauma I'm referring to. Is this car in good shape? Is it the right color, the right model? Will I be able to afford the payments? Can I trust the dealer? With the exception of purchasing a house no other transaction represents such a significant financial commitment nor produces such anxiety for consumers.

There seems to be significant evidence that the trauma associated with car purchases is caused by more than just understandable jitters. When I asked our Committee staff to identify the most serious consumer problems for our work next year, they concluded that our energies would be well-directed in studying car sale practices and procedures. In research conducted right here in San Diego by people we'll be hearing from later today, it was found that 76 out of 101 dealers did not disclose the defects that they knew existed in cars they were selling. The Federal Trade Commission, also represented today, found that consumers are generally unaware of the nature of their warranty protection, found that they do not know how, or for what reason, prior repairs on cars were made, and even suffer outright fraud in the manipulation of mileage readings. Purchasers of new cars occasionally find themselves stuck with a lemon, merchandise that is fundamentally so defective as to be functionally useless.

I want to emphasize that we do not enter this study with an assumption that bad faith on the part of car dealers is universal or even widespread. I personally believe that the great majority of dealers try hard to provide a decent product at a fair price, that they stand behind that product to the extent they promise at the time of purchase. I further recognize that we begin this work in a time of troubles for the auto industry; sales are down, factories are closing, and only one of the big four is in the black. Of course, we're all aware of the Chrysler problem. It's not the time to contribute to the problem by imposing unnecessary burdens on an industry so vital to our overall economic health. Perhaps there are some things we can do that are not burdensome to help the harried and abused consumer. There's a lot of talk about over-regulation these days. I personally believe that government has but one role in intervening in the matter of auto sales, and that role is a very

simple one: Namely, to insure that the buyer and seller enter a transaction with as much equality as possible in knowledge of the nature of the merchandise, of the overall cost of the bargain, and of the responsibility of the parties involved in meeting the terms of the contract. I don't feel that we have any business dictating these terms. After all, every American has the inalienable right to make a bad deal, but the judgment preceding such a deal must be made on the basis of accurate information. And, in making whatever judgment she or he chooses, each consumer must know that the State demands some basic faithfulness to the promises made at the time of the bargain. What the people demand is only basic honesty and decency.

I hope that will help frame the issue as we hear from a variety of folks with important and different perspectives on the problem of both new and used car sales. We are prepared to meet today and tomorrow, and we'll keep running until we can hear from everyone. I'd like to introduce the members of the Committee who are present. First, the Vice-Chairwoman of the Committee from Los Angeles, Sally Tanner. To my immediate right, Maria Husum and Greg Schmidt, who are Committee staff, Jim Ellis from San Diego, Bob Hayes from San Fernando, and Jerry Felando from San Pedro. Thank you fellows and Sally for joining us.

The first person to testify is Richard Spohn.

MR. RICHARD SPOHN: Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear here this morning. I have a lengthy and fairly detailed statement that I will submit for the record because I know you're late in getting underway. It contains some thoughtful reflections on the nature of the automobile in our society today and its relationship to the consumer. (See Appendix A)

CHAIRMAN LOCKYER: Do you have copies to distribute?

MR. SPOHN: Yes, they'll be distributed.

CHAIRMAN LOCKYER: Oh, I'm sorry, please identify yourself.

MR. SPOHN: Richard Spohn, I'm Director of the State Department of Consumer Affairs. We have within the Department the Bureau of Automotive Repair, which is one of the major state agencies dealing with used car repairs. I would like to give an overview of some of the recommendations that will be made today and tomorrow by our staff.

The automobile is one of the determinants of our society. The Transportation Department in California is probably the major land use planning agency, along with the Universities. The automobile is by far the most complained-about consumer commodity that we get, and to my knowledge, every other consumer



agency in the country gets. The Department of Motor Vehicles gets many complaints, the new Motor Vehicle Board does, and at the federal level, the National Highway Traffic and Safety Administration gets them. The complaints range from life-threatening safety defects to complaints about dealers' failure to honor warranty obligations. Our Bureau of Automotive Repair alone receives about 125,000 telephone complaints and inquiries, and about 27,000 written complaints a year from consumers who are having problems getting their cars repaired. I'm informed that DMV gets approximately 21,000 to 22,000 complaints along that line every year. It's my conviction that government and industry have not been treating the automobile seriously enough and that the consumer has consequently suffered. The cost of a new car today is equal to the down-payment on a home in many parts of the country. The auto repair industry in this country is a \$50 billion a year business. I think the challenge, Mr. Chairman, is for policy-making bodies such as this to begin to treat automobile design, engineering, production, sales, and warranty protection seriously. It's a very serious problem. There are mechanisms that can be deployed to treat the automobile with the seriousness that it ought to be, given its dominant role in our society today. I'd like to just outline six general recommendations that will be elaborated upon by my staff in the next couple of days.

The first one is that consumers need more information about cars, particularly used cars. I'm sure you are all aware of the assault on the Federal Trade Commission in Washington. I understand a representative of the Commission will be speaking to you today, so I won't try to make that case. I will say that we have participated for nearly four years in the FTC's rule-making proceedings in regard to used car sales, testifying, developing information, and so forth. I think that if there's anything this Committee can do it is to assist the Federal Trade Commissions' used car rule to survive the assault in Washington. You would be going a long way towards the objectives of these hearings. In the event that the Congress takes used cars out of the FTC's jurisdiction, it would be imperative that a California law be enacted to assure that the consumer is informed about the actual qualities of the used car he or she is considering buying. There have been several legislative measures in Sacramento over the last four years or so. Many of you are familiar and have been involved with them. Hopefully, there will be something coming out of these hearings.

Second, consumers need to know about the susceptibility to damage, repairability, and crash worthiness of new cars. There's been a federal program since 1972, mandating the National Highway Traffic Administration to gather the information regarding these points. The problem is that it's never been adequately funded. Indeed, it's only been funded in the last couple of years, and with an amount of money that is more an act of contempt than a



sincere commitment to insuring auto safety and getting this sort of information to consumers. I would urge this Committee to memorialize at least a California delegation to see to it that NHTA begins to collect that data so that consumers will have the kinds of information that they need to make more informed decisions about auto purchases. When you're making a decision about something that's equal to the amount of a down-payment on a house, you ought to have as much information as you possibly can get. That program would get a lot of good information to consumers and I think it ought to be put into place.

Thirdly, and this comes out of our experience of literally hundreds of thousands of complaints and disputes between car buyers and sellers, there is a need for a forum for airing and resolving disputes which the sellers and the buyers can't settle themselves. Our urging is always that seller and buyer try to work things out for themselves, but as you know, frequently they reach an impasse. It then becomes extremely helpful for the functioning of the marketplace, as well as for the realizing of justice, that there be a forum in which people can get some justice. Small claims courts have the best record of any court in resolving minor disputes, but these courts need to be improved to be truly helpful to people who have auto repair problems, as well as other problems. We recently concluded an 18-month study of small claims courts and submitted recommendations to the Legislature a couple of months ago. Recommended reforms would include requiring small claims court to hold evening or Saturday sessions, providing advisors to those involved, and also to giving litigants an explanatory booklet on court procedures. Again, techniques to make a more effective dispute resolution forum than we already have.

Fourthly, it's our recommendation that car buyers need dispute settlement procedures which are even less formal than in a small claims court. Ford Motor Company has launched a very creative appeals process for people who have problems with Ford dealers. It's that sort of creative approach that we're urging be expanded. There are measures in Washington for establishing neighborhood dispute resolution centers. Such legislation has been in and out of the California Legislature in the last couple of years. To the extent that we can establish forums and mechanisms that are sensitive to the problems of people at the level of living who may not be able to afford a costly attorney, to the extent we can do that, I think we're going to make the market a better place for both buyers and sellers. Buyers will get equity and they'll also have more confidence in sellers. Sellers will realize that ultimately, justice will be done. I think that's what we want to encourage. Under the point of dispute resolution, settlement procedures might also be included. I'm not sure I have any ideas how to do this, but there's a new industry just beginning to emerge, which I think should be encouraged. AAA has pioneered it and that is



providing a place where a consumer can get an independent third party assessment of a used car. Right now, the consumer is largely dependent upon the used car dealer for information. In most instances, that's a reliable source, but there's also a lot of experience that indicates the consumer is not sure when the source is reliable. Places where the consumer can get a diagnostic assessment of the quality of the car is a very important mechanism in the industry and it ought to be encouraged.

A fifth area that we'll be talking about today involves the consumer's need to be able to rely on the dealer and the manufacturer for further action after the sale, whether a new car or a used car. California's warranty laws need strengthening to include the enactment of a "lemon" clause requiring dealers to replace or make a refund for warranted cars they can't repair in three trips. Dick Elbrecht of our staff will be spending some considerable time with you outlining some suggestions as to how California's warranty laws could be improved to assist the new and used car buyer. Some of the recommendations will include: That all used vehicles sold at retail for personal use be accompanied by a non-disclaimable implied warranty of merchantability that reflects the actual agreement of the seller and the buyer when considering the condition of a vehicle. Many times what's on the paper doesn't contain all the little oral agreements and the consumer gets confused in that regard. Secondly, that written warranties in used car sales transactions not limit the option of the buyer to obtain servicing from any licensed repair facility, and to seek reimbursement of any proper charges from the warrantor. Thirdly, that a new or used vehicle be presumed unmerchantable when a defect is not corrected by the warrantor after 3 attempts - the lemon clause. And finally, that the remedies of the Song-Beverly Consumer Warranty Act be available in the case of all failures to honor the terms of a written warranty, a service contract, or a requirement of either federal or California law.

Finally, Bob Wiens, Chief of our Bureau of Automotive Repair, who is responsible for responding to the over 150,000 complaints that that Bureau receives every year, will be outlining to you a concept that we've been working on for about a year now which is a proposal for voluntary certification of auto repair facilities. The majority of auto-related complaints originate in the repair transaction itself. This proposal is a possible means to improve the position of the consumer and I might indicate that it has widespread support within the industry, so I don't think this would be viewed as another layer of government. This would be a voluntary program whereby the repair facilities would initially meet stringent standards for acceptance into the program. They would advertise their approved program and be continuously monitored as to their performance. They would agree by contract to guarantee their repairs, and

abide by established complaint resolution recommendations that they would bond. This is a program that the industry is very much interested in. Every honest repair dealer is very interested in distinguishing himself or herself from those that are known to be somewhat less scrupulous. It would also provide a mechanism that the consumer could rely on in selecting a repair facility.

Right now, Mr. Chairman and Members of the Committee, you've got to be aware, and Mr. Wiens will elaborate on this, that the Department of Consumer Affairs does not license mechanics. It certifies repair facilities. We get their name, money, and phone number, and then we take complaints. There is no testing for competence of mechanics in California; however, we're far ahead of the rest of the states in regard to used car consumer protection.

ASSEMBLYMAN FELANDO: From that last statement, do you favor some sort of a testing and licensing mechanism for mechanics?

MR. SPOHN: At this time, I think that the program that Mr. Wiens will be outlining ought to be the first step. I'm not sure that we need to be licensing mechanics at this point. That involves an extensive regulatory program. I think the steps should be going toward this voluntary industry-supported program whereby there is some guarantee of confidence that is backed up by contractual guarantees. Our philosophy is for the minimal amount of licensing necessary. That's why we're going to this interim voluntary certification approach. If this did not prove adequate, I would think that the next step would be something that I know this Committee has heard of the last couple of years, particularly in regard to appliance repair facilities, and that is an initial sign-up with the State, a registration program. Not a competency gauging program, but just a sign-up program. Then if a registrant over a given period of time is found to have had X-number of violations that are health and safety related, or however you want to craft it, that person would be required to pass a competency examination. So really what you're doing is giving the presumption to the people who sign up with the State that they are all right. But when a pattern of deviation from a standard is demonstrated, then they would be held to some goals. I think that's the better way to go rather than just requiring the entire industry to be licensed up front.

ASSEMBLYMAN ELLIS: What is your procedure when a complaint is received? What do you do?

MR. SPOHN: Well, Mr. Wiens will be able to detail this better for you, Mr. Ellis, but he has at the bureau an "800" toll-free telephone number where people from all over the state can call for nothing. He has a bank of personnel there to receive the calls who are professionally trained in consumer



complaint mediation. Typically, a call is then made to the dealer or the repair facility that is being complained about. If it appears to the staff that there has been a serious offense, an investigation will be conducted.

ASSEMBLYMAN ELLIS: By whom?

MR. SPOHN: By one of the Bureau's staff.

ASSEMBLYMAN ELLIS: By the Department:

MR. SPOHN: That's right. That can lead to revocation or suspension or some disciplinary action against the license of that repair facility. The Bureau gets approximately 150,000 complaints a year, so they're hopping.

ASSEMBLYMAN ELLIS: Alright, you receive a complaint and your trained people on the telephone will probably determine the degree of the complaint. If it's considered to be serious then they refer it to your investigative people and your investigative people go into the field, I assume, and actually talk to people and look at things. Then do you have authority, is it under Song-Beverly that you have authority to withdraw a certificate?

MR. SPOHN: It's not under Song-Beverly, Assemblyman, it's under the Automotive Repair Act. It's the Act that set up the Bureau itself.

ASSEMBLYMAN ELLIS: All right. Then you have the authority by some internal procedure to remove their certificate?

MR. SPOHN: That's right and that is done pursuant to a formal administrative hearing process, a hearing officer from the Office of Administrative Hearings. It's a formal disciplinary process.

ASSEMBLYMAN ELLIS: How many complaints out of the 150,000 a year result in the disciplinary process?

MR. SPOHN: I'll get Mr. Wiens to give you a better number than I can give you.

MR. ROBERT WIENS: I also am apologizing, Mr. Chairman, that we're talking about used cars and we're supposed to be on new cars.

CHAIRMAN LOCKYER: No, it's fine.

ASSEMBLYMAN ELLIS: The question is, how many of these complaints result in a serious investigation where a certificate may be withdrawn?

MR. WIENS: In the last fiscal year, I think we had a total of about 29 administrative actions, but in addition to administrative actions there are two other kinds. There is a civil action and a criminal action and of all three combined which we lump under the fraud category of disciplinary action, I believe we had 141.

ASSEMBLYMAN ELLIS: And involving how many people?

MR. WIENS: One hundred and forty-one repair facilities.

ASSEMBLYMAN ELLIS: All different facilities?

MR. WIENS: Yes sir.

ASSEMBLYMAN ELLIS: So there could have been multiple complaints about any individual facility?

MR. WIENS: Yes sir.

ASSEMBLYMAN ELLIS: I see the Attorney General represented here. Do you refer the criminal complaints to him?

MR. WIENS: Primarily the civil, sir. The criminal cases are referred to local prosecutors.

MR. SPOHN: One other feature of the Bureau's program that you may be interested in, Assemblyman, is the fleet of undercover cars. When the Bureau senses that a given facility is being a little sharp with consumers, they'll modify an undercover vehicle and send it for specific repairs. Afterwards, they gauge the repairs and frequently find that the vehicle was treated as consumers alleged their vehicles were treated. It's a very effective enforcement tool.

ASSEMBLYMAN FELANDO: That's entrapment, isn't it?

MR. SPOHN: No sir, it's not.

ASSEMBLYMAN FELANDO: Mr. Spohn, of the complaints that you receive, what percentage of those complaints are on U.S.-made cars and what percentage are on foreign-made cars?

MR. SPOHN: I'm not sure. Bob, do you have those? The question is the percentage of complaints on foreign as opposed to domestic automobiles. Do you have that breakup?

MR. WIENS: No, not specifically.

ASSEMBLYMAN FELANDO: I'm amazed you don't have that. Okay.

MR. WIENS: I hope to be able to provide that with a proper



EDP based management information system soon.

ASSEMBLYMAN FELANDO: It seems incredible to me that you wouldn't have that. Okay, another question. A while back "60 Minutes" had a show on television that dealt with the rip-offs that people receive, especially when they're on vacation, from different service stations and mechanic shops along their route. Does the State of California have a program to help prevent this kind of rip-off to the consumer?

MR. WIENS: The primary means we have is one the Director described previously. With the use of the undercover vehicle, particularly out in the desert areas, we find that kind of traffic going between Arizona and Nevada and California. That is the same kind of traffic that the "60 Minutes" people found in the north/south corridor that runs through the State of Georgia. We have a similar type of traffic situation, of course, between Los Angeles and Las Vegas, and Los Angeles and Arizona.

ASSEMBLYMAN FELANDO: On your undercover cars, are those all with California license plates, or do you mix the plates up?

MR. WIENS: They're mixed up.

ASSEMBLYMAN FELANDO: They are mixed up?

MR. WIENS: It depends on the situation.

ASSEMBLYMAN FELANDO: That's very good.

CHAIRMAN LOCKYER: Well, I'm glad you got one right. What the hell that's pretty good for government. All right, go ahead.

ASSEMBLYMAN HAYES: Something that always bothers me when we go into more regulation. Are we coming into a situation where there is an increase of abuse, or are we just discovering abuse? What is happening to constantly require that every agency, every level of government needs more regulation, more control? What is happening in our society? Is there actually an increase in dishonesty among our people, or is it actually that we are becoming a less honorable society? Is it perhaps that the very regulations we put on people feed the abuses that we are trying to combat here?

CHAIRMAN LOCKYER: That's a wonderful question and I'm wondering if you would expect him to know from his Jesuit background or as the Director of the Department?

ASSEMBLYMAN HAYES: I'm making a statement. And I think we should have this in mind. I think an example of this is in the building industry. Some 50 years ago everyone would dream of having a better house. You could buy a better house

than you can today and the carpenters weren't any better, the contractors weren't any more honorable, but the consumer took it upon himself to make sure what he was buying. Today we have a Department of Building and Safety, we have a maze of bureaucratic paperwork in the construction industry, and today we have minimum standards. Consequently, we can only buy a minimum standard house. That's all you can buy. Just a minimum standard home today because of the "protection" that we have given the consumer. These protections add as high as \$20,000 to the price of a home and that depends on the area where you're living. You used to be able to buy the whole home for the cost in paperwork today. I'm wondering if we might want to be looking at whether or not we are being counterproductive in our protection. We must protect the consumer if the protection is needed, but do we sometimes in our zealously to protect individual rights become the destroyer in our work? It's just a statement more than a question. I'd like to have you respond to that.

MR. SPOHN: Well, I stopped beating my wife, Assemblyman, about six months before I sold her. To answer your question, our philosophy in the Department has been that the best line of consumer protection is self-protection. That's why we've put a strong emphasis on consumer education. We've got some of these materials here today and we'll be glad to share them with you. The question of building standards and the quality of homes -- those are sins and offenses that I really can't understand. I think that the less regulation you have the better chance you have of enforcing the regulation that you do have. The more regulation you have the more contempt people are going to have for government. We try to hold the line on new regulations because we want to keep them for the areas that are really necessary. We have opposed every single licensing proposal that has been brought up in the Legislature, or that never even got to the Legislature because it was realized we would oppose it vigorously. So, our philosophy is not expansive regulation. What we are trying to do in these proposals is to give the consumer as much information as possible because it's our conviction that if we're going to have a marketplace, the marketplace functions best when the consumer has the best information available. These proposals are consumer oriented so that competitive forces operating within the marketplace will ultimately give the consumer the best buy, both in terms of price and quality. When the consumer is ignorant, he can be victimized. When the consumer has information, he's in a much better position to protect himself or herself. That's our philosophy and that's the thrust of these recommendations.

ASSEMBLYMAN HAYES: In other words, your basic program is based primarily on consumer education?

MR. SPOHN: That's one of our major components. Our legislative mandate also requires us to represent the consumers'

**ASSEMBLY BILL**

**No. 2057**

**Introduced by Assembly Member Tanner**

**March 6, 1987**

An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend Section 1793.2 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as introduced, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. The bill would revise the definition of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution



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process” for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would also make related changes.

The bill would create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote: 3/4. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
6 DISPUTE RESOLUTION PROCESSES  
7

8 9889.70. Unless the context requires otherwise, the  
9 following definitions govern the construction of this  
10 chapter:

11 (a) “Bureau” means the Bureau of Automotive  
12 Repair.

13 (b) “New motor vehicle” means a new motor vehicle  
14 as defined in subparagraph (B) of paragraph (4) of  
15 subdivision (e) of Section 1793.2 of the Civil Code.

16 (c) “Manufacturer” means a new motor vehicle  
17 manufacturer, manufacturer branch, distributor, or

1 distributor branch required to be licensed pursuant to  
2 Article 1 (commencing with Section 11700) of Chapter 4  
3 of Division 5 of the Vehicle Code.

4 (d) “Qualified third party dispute resolution process”  
5 means a third party dispute resolution process which  
6 meets the criteria set forth in paragraph (3) of  
7 subdivision (e) of Section 1793.2 of the Civil Code and  
8 which has been certified by the bureau pursuant to this  
9 chapter.

10 9889.71. The bureau shall establish a program for  
11 certifying each third party dispute resolution process  
12 used for the arbitration of disputes pursuant to paragraph  
13 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
14 In establishing the program, the bureau shall do all of the  
15 following:

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

18 (b) Establish a set for minimum standards which shall  
19 be used to determine whether a third party dispute  
20 resolution process is in compliance with the criteria set  
21 forth in paragraph (3) of subdivision (e) of Section 1793.2  
22 of the Civil Code.

23 (c) Prescribe the information which each  
24 manufacturer, or other entity, that uses a third party  
25 dispute resolution process, and which seeks to have that  
26 process certified by the bureau, shall provide the bureau  
27 in the application for certification. In prescribing the  
28 information to accompany the application for  
29 certification, the bureau shall require the manufacturer,  
30 or other entity, to provide only that information which  
31 the bureau finds is reasonably necessary to enable the  
32 bureau to determine whether the third party dispute  
33 resolution process is in compliance with the criteria set  
34 forth in paragraph (3) of subdivision (e) of Section 1793.2  
35 of the Civil Code.

36 (d) Prescribe the information that each qualified third  
37 party dispute resolution process shall provide the bureau,  
38 and the time intervals at which the information shall be  
39 required, to enable the bureau to determine whether the  
40 qualified third party dispute resolution process continues



1 to operate in compliance with the criteria set forth in  
2 paragraph (3) of subdivision (e) of Section 1793.2 of the  
3 Civil Code.

4 9889.72. (a) Each manufacturer shall establish, or  
5 otherwise make available to buyers or lessees of new  
6 motor vehicles, a qualified third party dispute resolution  
7 process of the resolution of disputes pursuant to  
8 paragraph (2) of subdivision (e) of Section 1793.2 of the  
9 Civil Code. The manufacturer, or other entity, which  
10 operates the third party dispute resolution process shall  
11 apply to the bureau for certification of that process. The  
12 application for certification shall be accompanied by the  
13 information prescribed by the bureau.

14 (b) The bureau shall review the application and  
15 accompanying information and, after conducting an  
16 onsite inspection, shall determine whether the third  
17 party dispute resolution process is in compliance with the  
18 criteria set forth in paragraph (3) of subdivision (e) of  
19 Section 1793.2 of the Civil Code. If the bureau determines  
20 that the process is in compliance with those criteria, the  
21 bureau shall certify the process. If the bureau determines  
22 that the process is not in compliance with those criteria,  
23 the bureau shall deny certification and shall state, in  
24 writing, the reasons for denial and the modifications in  
25 the operation of the process that are required in order for  
26 the process to be certified.

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

32 9889.73. (a) The bureau, in accordance with the time  
33 intervals prescribed pursuant to subdivision (d) of  
34 Section 9889.71, but at least once annually, shall review  
35 the operation and performance of each qualified third  
36 party dispute resolution process and determine, using the  
37 information provided the bureau as prescribed pursuant  
38 to subdivision (d) of Section 9889.71 and the monitoring  
39 and inspection information described in subdivision (c)  
40 of Section 9889.74, whether the process is operating in

1 compliance with the criteria set forth in paragraph (3) of  
2 subdivision (e) of Section 1793.2 of the Civil Code. If the  
3 bureau determines that the process is in compliance with  
4 those criteria, the certification shall remain in effect.

5 (b) If the bureau determines that the process is not in  
6 compliance with one or more of the criteria set forth in  
7 paragraph (3) of subdivision (e) of Section 1793.2 of the  
8 Civil Code, the bureau shall issue a notice of  
9 decertification to the manufacturer, or other entity,  
10 which uses that process. The notice of decertification  
11 shall state the reasons for the issuance of the notice,  
12 enumerate the criteria set forth in paragraph (3) of  
13 subdivision (e) of Section 1793.2 of the Civil Code with  
14 which the process is not in compliance, and prescribe the  
15 modifications in the operation of the process that are  
16 required in order for the process to retain its certification.

17 (c) A notice of decertification shall take effect 180  
18 calendar days following the date the notice is served on  
19 the manufacturer, or other entity, which uses the process  
20 that the bureau has determined is not in compliance with  
21 one or more of the criteria set forth in paragraph (3) of  
22 subdivision (e) of Section 1793.2 of the Civil Code. The  
23 bureau shall withdraw the notice of decertification prior  
24 to its effective date if the bureau determines, after a  
25 public hearing, that the manufacturer, or other entity,  
26 which uses the process has made the modifications in the  
27 operation of the process required in the notice of  
28 decertification and is in compliance with the criteria set  
29 forth in paragraph (3) of subdivision (e) of Section 1793.2  
30 of the Civil Code.

31 9889.74. In addition to any other requirements of this  
32 chapter, the bureau shall do all of the following:

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

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



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

6 (1) Onsite inspections of each certified process not less  
 7 frequently than twice annually.

8 (2) Investigation of complaints from consumers  
 9 regarding the operation of certified third party dispute  
 10 resolution processes and analyses of representative  
 11 samples of complaints against each process.

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

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

20 (e) Submit a biennial report to the Legislature  
 21 evaluating the effectiveness of this chapter, make  
 22 available to the public summaries of the statistics and  
 23 other information supplied by certified third party  
 24 resolution process, and publish educational materials  
 25 regarding the purposes of this chapter.

26 (f) Adopt regulations as necessary and appropriate to  
 27 implement the provisions of this chapter.

28 9889.75. The New Motor Vehicle Board in the  
 29 Department of Motor Vehicles shall, in accordance with  
 30 the procedures prescribed in this section, administer the  
 31 collection of fees for the purposes of fully funding the  
 32 administration of this chapter.

33 (a) There is hereby created in the Automotive Repair  
 34 Fund a Certification Account. Fees collected pursuant to  
 35 this section shall be deposited in the Certification  
 36 Account and shall be available, upon appropriation by the  
 37 Legislature, exclusively to pay the expenses incurred by  
 38 the bureau in administering this chapter. If at the  
 39 conclusion of any fiscal year the amount of fees collected  
 40 exceeds the amount of expenditures for that purpose

1 during that fiscal year, the surplus in the Certification  
 2 Account shall be carried over into the succeeding fiscal  
 3 year.

4 (b) Beginning July 1, 1988, every applicant for a  
 5 license as a manufacturer, manufacturer branch,  
 6 distributor, or distributor branch, and every applicant for  
 7 the renewal of a license as a manufacturer, manufacturer  
 8 branch, distributor, or distributor branch, shall  
 9 accompany the application with a statement of the  
 10 number of motor vehicles sold, leased, or otherwise  
 11 distributed by or for the applicant in this state during the  
 12 preceding calendar year, together with a breakdown by  
 13 make, model, and model year and any other information  
 14 that the New Motor Vehicle Board may require, and shall  
 15 pay to the Department of Motor Vehicles, for each  
 16 issuance or renewal of the license, an amount prescribed  
 17 by the New Motor Vehicle Board, but not to exceed one  
 18 dollar (\$1) for each motor vehicle sold, leased, or  
 19 distributed by or for the applicant in this state during the  
 20 preceding calendar year. The total fee paid by each  
 21 licensee shall be rounded to the nearest dollar in the  
 22 manner described in Section 9559 of the Vehicle Code.  
 23 No more than one dollar (\$1) shall be charged, collected,  
 24 or received from any one or more licensees pursuant to  
 25 this subdivision with respect to the same motor vehicle.

26 (c) On or before January 1 of each calendar year, the  
 27 bureau shall determine the dollar amount, not to exceed  
 28 one dollar (\$1) per motor vehicle, which shall be  
 29 collected and received by the Department of Motor  
 30 Vehicles beginning July 1 of that year, based upon an  
 31 estimate of the number of sales, leases, and other  
 32 dispositions of motor vehicles in this state during the  
 33 preceding calendar year, in order to fully fund the  
 34 program established by this chapter during the following  
 35 fiscal year. The bureau shall notify the New Motor  
 36 Vehicle Board of the dollar amount per motor vehicle  
 37 that the New Motor Vehicle Board shall use in calculating  
 38 the amounts of the fees to be collected from applicants  
 39 pursuant to this subdivision.

40 (d) For the purposes of this section, "motor vehicle"



1 means a new passenger or commercial motor vehicle of  
 2 a kind that is required to be registered under the Vehicle  
 3 Code, but the term does not include a motorcycle, a  
 4 motor home, or any vehicle whose gross weight exceeds  
 5 10,000 pounds.

6 (e) The New Motor Vehicle Board may adopt  
 7 regulations to implement this section.

8 SEC. 2. Section 1793.2 of the Civil Code is amended  
 9 to read:

10 1793.2. (a) Every manufacturer of consumer goods  
 11 sold in this state and for which the manufacturer has  
 12 made an express warranty shall:

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

20 As a means of complying with ~~paragraph (1) of this~~  
 21 ~~subdivision this paragraph~~, a manufacturer shall be  
 22 ~~permitted to~~ may enter into warranty service contracts  
 23 with independent service and repair facilities. The  
 24 warranty service contracts may provide for a fixed  
 25 schedule of rates to be charged for warranty service or  
 26 warranty repair work, however, the rates fixed by such  
 27 contracts shall be in conformity with the requirements of  
 28 subdivision (c) of Section 1793.3. The rates established  
 29 pursuant to subdivision (c) of Section 1793.3, between the  
 30 manufacturer and the independent service and repair  
 31 facility, shall not preclude a good faith discount which is  
 32 reasonably related to reduced credit and general  
 33 overhead cost factors arising from the manufacturer's  
 34 payment of warranty charges direct to the independent  
 35 service and repair facility. The warranty service contracts  
 36 authorized by this paragraph shall not be executed to  
 37 cover a period of time in excess of one year, and may be  
 38 renewed only by a separate, new contract or letter of  
 39 agreement between the manufacturer and the  
 40 independent service and repair facility.

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

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

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

22 (c) ~~It shall be the duty of the buyer to~~ *The buyer shall*  
 23 deliver nonconforming goods to the manufacturer's  
 24 service and repair facility within this state, unless, due to  
 25 reasons of size and weight, or method of attachment, or  
 26 method of installation, or nature of the nonconformity,  
 27 ~~such~~ delivery cannot reasonably be accomplished.  
 28 ~~Should the buyer be unable to effect return of~~ *If the*  
 29 ~~buyer cannot return the~~ nonconforming goods for any of  
 30 ~~the above these~~ reasons, he or she shall notify the  
 31 manufacturer or its nearest service and repair facility  
 32 within the state. Written notice of nonconformity to the  
 33 manufacturer or its service and repair facility shall  
 34 constitute return of the goods for purposes of this section.  
 35 Upon receipt of such notice of nonconformity the  
 36 manufacturer shall, at its option, service or repair the  
 37 goods at the buyer's residence, or pick up the goods for  
 38 service and repair, or arrange for transporting the goods  
 39 to its service and repair facility. All reasonable costs of  
 40 transporting the goods when; ~~pursuant to the above, a~~



1 ~~buyer is unable to effect return~~ a buyer cannot return  
 2 them for any of the above reasons shall be at the  
 3 manufacturer's expense. The reasonable costs of  
 4 transporting nonconforming goods after delivery to the  
 5 service and repair facility until return of the goods to the  
 6 buyer shall be at the manufacturer's expense.

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

16 (2) If the manufacturer of its representative in this  
 17 state is unable to service or repair a new motor vehicle,  
 18 as that term is defined in subparagraph (B) of paragraph  
 19 (4) of subdivision (e), to conform to the applicable  
 20 express warranties after a reasonable number of  
 21 attempts, the manufacturer shall either promptly replace  
 22 the new motor vehicle in accordance with subparagraph  
 23 (A) or promptly make restitution to the buyer in  
 24 accordance with subparagraph (B). However, the buyer  
 25 shall be free to elect restitution in lieu of replacement,  
 26 and in no event shall the buyer be required by the  
 27 manufacturer to accept a replacement vehicle.

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

1 (B) In the case of restitution, the manufacturer shall  
 2 make restitution in an amount equal to the actual price  
 3 paid or payable by the buyer, including any charges for  
 4 transportation and manufacturer-installed options, but  
 5 excluding nonmanufacturer items installed by a dealer or  
 6 the buyer, and including any collateral charges such as  
 7 sales tax, license fees, registration fees, and other official  
 8 fees, plus any incidental damages to which the buyer is  
 9 entitled under Section 1794, including, but not limited to,  
 10 reasonable repair, towing, and rental car costs actually  
 11 incurred by the buyer.

12 (C) When the manufacturer replaces the new motor  
 13 vehicle pursuant to subparagraph (A), the manufacturer  
 14 may require the buyer to reimburse the manufacturer in  
 15 an amount directly attributable to use by the buyer of the  
 16 replaced vehicle prior to the time the buyer first  
 17 delivered the vehicle to the manufacturer or distributor,  
 18 or its authorized service and repair facility for correction  
 19 of the problem that gave rise to the nonconformity.  
 20 When restitution is made pursuant to subparagraph (B),  
 21 the amount to be paid by the manufacturer to the buyer  
 22 may be reduced by the manufacturer by that amount  
 23 directly attributable to use by the buyer prior to the time  
 24 the buyer first delivered the vehicle to the manufacturer  
 25 or distributor, or its authorized service and repair facility  
 26 for correction of the problem that gave rise to the  
 27 nonconformity. Nothing in this paragraph shall in any  
 28 way limit the rights or remedies available to the buyer  
 29 under any other law.

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



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

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

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

7 ~~(3) A qualified third party dispute resolution process~~  
 8 ~~shall be one that complies with the Federal Trade~~  
 9 ~~Commission's minimum requirements for informal~~  
 10 ~~dispute settlement procedures as set forth in the~~  
 11 ~~commission's regulations at 16 Code of Federal~~  
 12 ~~Regulations Part 703; that renders decisions which are~~  
 13 ~~binding on the manufacturer if the buyer elects to accept~~  
 14 ~~the decision; that prescribes a reasonable time not to~~  
 15 ~~exceed 30 days, within which the manufacturer or its~~  
 16 ~~agents must fulfill the terms of those decisions; and that~~  
 17 ~~each year provides to the Department of Motor Vehicles~~  
 18 ~~a report of its annual audit required by the commission's~~  
 19 ~~regulations on informal dispute resolution procedures.~~

20 (3) A qualified third party dispute resolution process  
 21 shall meet all of the following criteria:

22 (A) The process complies with the minimum  
 23 requirements of the Federal Trade Commission for  
 24 informal dispute settlement procedures as set forth in  
 25 Part 703 of Title 16 of the Code of Federal Regulations,  
 26 as those regulations read on January 1, 1987.

27 (B) The process renders decisions which are binding  
 28 on the manufacturer if the buyer elects to accept the  
 29 decision.

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

34 (D) The process provides written materials to those  
 35 individuals who conduct investigations and who make, or  
 36 participate in making, decisions for the program which,  
 37 at a minimum include the Federal Trade Commission's  
 38 regulations in Part 703 of Title 16 of the Code of Federal  
 39 Regulations as those regulations read on January 1, 1987,  
 40 Division 2 (commencing with Section 2101) of the



1 *Commercial Code, and this chapter.*

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

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

25 (G) *The process has been certified by the Bureau of*  
26 *Automotive Repair pursuant to Chapter 20.5*  
27 *(commencing with Section 9839.70) of Division 3 of the*  
28 *Business and Professions Code.*

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

32 (A) *"Nonconformity" means a nonconformity which*  
33 *substantially impairs the use, value, or safety of the new*  
34 *motor vehicle.*

35 (B) *"New motor vehicle" means a new motor vehicle*  
36 *which is used or bought for use primarily for personal,*  
37 *family, or household purposes. "New motor vehicle"*  
38 *includes a dealer-owned vehicle and a "demonstrator" or*  
39 *other motor vehicle sold with a manufacturer's new car*  
40 *warranty but does not include motoreyes, motorhomes,*

1 ~~or off/road vehicles~~ *a motorcycle, a motorhome, or a*  
2 *motor vehicle which is not registered under the Vehicle*  
3 *Code because it is to be operated or used exclusively off*  
4 *the highways.*

5 SEC. 3. *Section 1793.25 is added to the Civil Code, to*  
6 *read:*

7 1793.25. (a) *Notwithstanding Part 1 (commencing*  
8 *with Section 6001) of Division 2 of the Revenue and*  
9 *Taxation Code, the State Board of Equalization shall*  
10 *reimburse the manufacturer of a new motor vehicle for*  
11 *an amount equal to the sales tax which the manufacturer*  
12 *includes in making restitution to the buyer pursuant to*  
13 *subparagraph (B) or paragraph (2) of subdivision (d) of*  
14 *Section 1793.2, when satisfactory proof is provided that*  
15 *the retailer of the motor vehicle for which the*  
16 *manufacturer is making restitution has reported and paid*  
17 *the sales tax on the gross receipts from the sale of that*  
18 *motor vehicle. The State Board of Equalization may*  
19 *adopt rules and regulations to carry out, facilitate*  
20 *compliance with, or prevent circumvention or evasion of,*  
21 *this section.*

22 (b) *Nothing in this section shall in any way change the*  
23 *application of the sales and use tax to the gross receipts*  
24 *and the sales price from the sale, and the storage, use, or*  
25 *other consumption, in this state or tangible personal*  
26 *property pursuant to Part 1 (commencing with Section*  
27 *6001) of Division 2 of the Revenue and Taxation Code.*

28 (c) *The manufacturer's claim for reimbursement and*  
29 *the board's approval or denial of the claim shall be subject*  
30 *to the provisions of Article 1 (commencing with Section*  
31 *6901) of Chapter 7 of Part 1 of Division 2 of the Revenue*  
32 *and Taxation Code, except Sections 6902.1, 6903, 6907,*  
33 *and 6908 thereof, insofar as those provisions are not*  
34 *inconsistent with this section.*

35 SEC. 4. *Section 7102 of the Revenue and Taxation*  
36 *Code is amended to read:*

37 7102. *The money in the fund shall, upon order of the*  
38 *Controller, be drawn therefrom for refunds under this*  
39 *part, and pursuant to Section 1793.25 of the Civil Code,*  
40 *or be transferred in the following manner:*



1 (a) (1) All revenues, less refunds, derived under this  
 2 part at the 4% percent rate, including the imposition of  
 3 sales and use taxes with respect to the sale, storage, use,  
 4 or other consumption of motor vehicle fuel which would  
 5 not have been received if the sales and use tax rate had  
 6 been 5 percent and if motor vehicle fuel, as defined for  
 7 purposes of the Motor Vehicle Fuel License Tax Law  
 8 (Part 2 (commencing with Section 7301)), had been  
 9 exempt from sales and use taxes, shall be estimated by the  
 10 State Board of Equalization, with the concurrence of the  
 11 Department of Finance shall be transferred during each  
 12 fiscal year to the Transportation Planning and  
 13 Development Account in the State Transportation Fund  
 14 for appropriation pursuant to Section 99312 of the Public  
 15 Utilities Code.

16 (2) If the amount transferred pursuant to paragraph  
 17 (1) is less than one hundred ten million dollars  
 18 (\$110,000,000) in any fiscal year, an additional amount  
 19 equal to the difference between one hundred ten million  
 20 dollars (\$110,000,000) and the amount so transferred shall  
 21 be transferred, to the extent funds are available, as  
 22 follows:

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

25 (B) For the 1987-88 and each subsequent fiscal year,  
 26 from the state revenues due to the imposition of sales and  
 27 use taxes on fuel, as defined for purposes of the Use Fuel  
 28 Tax Law (Part 3 (commencing with Section 8601)).

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

31 (c) The estimate required by subdivision (a) shall be  
 32 based on taxable transactions occurring during a calendar  
 33 year, and the transfers required by subdivision (a) shall  
 34 be made during the fiscal year that commences during  
 35 that same calendar year. Transfers required by  
 36 paragraphs (1) and (2) of subdivision (a) shall be made  
 37 quarterly.

38 SEC. 5. Section 3050 of the Vehicle Code is amended  
 39 to read:

40 3050. The board shall do all of the following:

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

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

14 (c) Consider any matter concerning the activities or  
 15 practices of any person applying for or holding a license  
 16 as a new motor vehicle dealer, manufacturer,  
 17 manufacturer branch, distributor, distributor branch, or  
 18 representative pursuant to Chapter 4 (commencing with  
 19 Section 11700) of Division 5 submitted by any person. A  
 20 member of the board who is a new motor vehicle dealer  
 21 may not participate in, hear, comment, advise other  
 22 members upon, or decide any matter considered by the  
 23 board pursuant to this subdivision that involves a dispute  
 24 between a franchisee and franchisor. After such  
 25 consideration, the board may do any one or any  
 26 combination of the following:

27 (1) Direct the department to conduct investigation of  
 28 matters that the board deems reasonable, and make a  
 29 written report on the results of the investigation to the  
 30 board within the time specified by the board.

31 (2) Undertake to *mediate*, arbitrate ~~amicably or~~, or  
 32 *otherwise* resolve any honest difference of opinion or  
 33 viewpoint existing between any member of the public  
 34 and any new motor vehicle dealer, manufacturer,  
 35 manufacturer branch, distributor branch, or  
 36 representative.

37 (3) Order the department to exercise any and all  
 38 authority or power that the department may have with  
 39 respect to the issuance, renewal, refusal to renew,  
 40 suspension, or revocation of the license of any new motor





1 vehicle dealer, manufacturer, manufacturer branch,  
2 distributor, distributor branch, or representative as such  
3 license is required under Chapter 4 (commencing with  
4 Section 11700) of Division 5.

5 (d) Hear and consider, within the limitations and in  
6 accordance with the procedure provided, a protest  
7 presented by a franchisee pursuant to Section 3060, 3062,  
8 3064, or 3065. A member of the board who is a new motor  
9 vehicle dealer may not participate in, hear, comment,  
10 advise other members upon, or decide, any matter  
11 involving a protest filed pursuant to Article 4  
12 (commencing with Section 3060).

O



Introduced by Assembly Member Tanner

March 6, 1987

An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend ~~Section 1793.2~~ Sections 1793.2 and 1794 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

LIS - 1b



The bill would revise the ~~definition~~ definitions of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. *The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lesser to a manufacturer for a nonconformity, as defined, except as specified.* The bill would also make related changes.

The bill would create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) *Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.*

*This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also require the award of civil penalties, as specified, against certain manufacturers.* Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

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

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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

1 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
2 DISPUTE RESOLUTION PROCESSES

3  
4 9889.70. Unless the context requires otherwise, the  
5 following definitions govern the construction of this  
6 chapter:

7 (a) "Bureau" means the Bureau of Automotive  
8 Repair.

9 (b) "New motor vehicle" means a new motor vehicle  
10 as defined in subparagraph (B) of paragraph (4) of  
11 subdivision (e) of Section 1793.2 of the Civil Code.

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

17 (d) "Qualified third party dispute resolution process"  
18 means a third party dispute resolution process which  
19 ~~meets the criteria set forth in~~ operates in compliance  
20 with paragraph (3) of subdivision (e) of Section 1793.2 of  
21 the Civil Code and this chapter and which has been  
22 certified by the bureau pursuant to this chapter.

23 9889.71. The bureau shall establish a program for  
24 certifying each third party dispute resolution process  
25 used for the arbitration of disputes pursuant to paragraph  
26 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
27 In establishing the program, the bureau shall do all of the  
28 following:

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

31 (b) Establish a set ~~for~~ of minimum standards which  
32 shall be used to determine whether a third party dispute  
33 resolution process is in compliance with ~~the criteria set~~  
34 ~~forth in~~ paragraph (3) of subdivision (e) of Section 1793.2  
35 of the Civil Code and this chapter.

36 (c) Prescribe the information which each  
37 manufacturer, or other entity, that uses a third party  
38 dispute resolution process, and ~~which seeks that applies~~  
39 to have that process certified by the bureau, shall provide  
40 the bureau in the application for certification. In



1 prescribing the information to accompany the  
2 application for certification, the bureau shall require the  
3 manufacturer, or other entity, to provide only that  
4 information which the bureau finds is reasonably  
5 necessary to enable the bureau to determine whether the  
6 third party dispute resolution process is in compliance  
7 with ~~the criteria set forth in~~ paragraph (3) of subdivision  
8 (e) of Section 1793.2 of the Civil Code *and this chapter*.

9 (d) Prescribe the information that each qualified third  
10 party dispute resolution process shall provide the bureau,  
11 and the time intervals at which the information shall be  
12 required, to enable the bureau to determine whether the  
13 qualified third party dispute resolution process continues  
14 to operate in compliance with ~~the criteria set forth in~~  
15 paragraph (3) of subdivision (e) of Section 1793.2 of the  
16 Civil Code *and this chapter*.

17 9889.72. (a) Each manufacturer ~~shall~~ may establish,  
18 or otherwise make available to buyers or lessees of new  
19 motor vehicles, a qualified third party dispute resolution  
20 process ~~of~~ for the resolution of disputes pursuant to  
21 paragraph (2) of subdivision (e) of Section 1793.2 of the  
22 Civil Code. The manufacturer, or other entity, which  
23 operates the third party dispute resolution process shall  
24 apply to the bureau for certification of that process. The  
25 application for certification shall be accompanied by the  
26 information prescribed by the bureau.

27 (b) The bureau shall review the application and  
28 accompanying information and, after conducting an  
29 onsite inspection, shall determine whether the third  
30 party dispute resolution process is in compliance with ~~the~~  
31 ~~criteria set forth in~~ paragraph (3) of subdivision (e) of  
32 Section 1793.2 of the Civil Code *and this chapter*. If the  
33 bureau determines that the process is in compliance with  
34 ~~those criteria~~, the bureau shall certify the process. If the  
35 bureau determines that the process is not in compliance  
36 with ~~those criteria~~, the bureau shall deny certification  
37 and shall state, in writing, the reasons for denial and the  
38 modifications in the operation of the process that are  
39 required in order for the process to be certified.

40 (c) The bureau shall make a final determination

1 whether to certify a third party dispute resolution process  
2 or to deny certification not later than 90 calendar days  
3 following the date the bureau accepts the application for  
4 certification as complete.

5 9889.73. (a) The bureau, in accordance with the time  
6 intervals prescribed pursuant to subdivision (d) of  
7 Section 9889.71; but at least once annually, shall review  
8 the operation and performance of each qualified third  
9 party dispute resolution process and determine, using the  
10 information provided the bureau as prescribed pursuant  
11 to subdivision (d) of Section 9889.71 and the monitoring  
12 and inspection information described in subdivision (c)  
13 of Section 9889.74, whether the process is operating in  
14 compliance with ~~the criteria set forth in~~ paragraph (3) of  
15 subdivision (e) of Section 1793.2 of the Civil Code *and*  
16 *this chapter*. If the bureau determines that the process is  
17 in compliance with ~~those criteria~~, the certification shall  
18 remain in effect.

19 (b) If the bureau determines that the process is not in  
20 compliance with ~~one or more of the criteria set forth in~~  
21 paragraph (3) of subdivision (e) of Section 1793.2 of the  
22 Civil Code *or this chapter*, the bureau shall issue a notice  
23 of decertification to the manufacturer, or other entity,  
24 which uses that process. The notice of decertification  
25 shall state the reasons for the issuance of the ~~notice~~;  
26 ~~enumerate the criteria set forth in paragraph (3) of~~  
27 ~~subdivision (e) of Section 1793.2 of the Civil Code with~~  
28 ~~which the process is not in compliance, and prescribe the~~  
29 ~~notice and prescribe the modifications in the operation of~~  
30 the process that are required in order for the process to  
31 retain its certification.

32 (c) A notice of decertification shall take effect 180  
33 calendar days following the date the notice is served on  
34 the manufacturer, or other entity, which uses the process  
35 that the bureau has determined is not in compliance with  
36 ~~one or more of the criteria set forth in~~ paragraph (3) of  
37 subdivision (e) of Section 1793.2 of the Civil Code *or this*  
38 *chapter*. The bureau shall withdraw the notice of  
39 decertification prior to its effective date if the bureau  
40 determines, after a public hearing, that the



1 manufacturer, or other entity, which uses the process has  
 2 made the modifications in the operation of the process  
 3 required in the notice of decertification and is in  
 4 compliance with the ~~criteria set forth in~~ paragraph (3) of  
 5 subdivision (e) of Section 1793.2 of the Civil Code *and*  
 6 *this chapter.*

7 9889.74. In addition to any other requirements of this  
 8 chapter, the bureau shall do all of the following:

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

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

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

23 (1) Onsite inspections of each certified process not less  
 24 frequently than twice annually.

25 (2) Investigation of complaints from consumers  
 26 regarding the operation of ~~certified~~ *qualified* third party  
 27 dispute resolution processes and analyses of  
 28 representative samples of complaints against each  
 29 process.

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

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

38 (e) Submit a biennial report to the Legislature  
 39 evaluating the effectiveness of this chapter, make  
 40 available to the public summaries of the statistics and

1 other information supplied by ~~certified~~ *each qualified*  
 2 third party resolution process, and publish educational  
 3 materials regarding the purposes of this chapter.

4 (f) Adopt regulations as necessary and appropriate to  
 5 implement the provisions of this chapter.

6 9889.75. The New Motor Vehicle Board in the  
 7 Department of Motor Vehicles shall, in accordance with  
 8 the procedures prescribed in this section, administer the  
 9 collection of fees for the purposes of fully funding the  
 10 administration of this chapter.

11 (a) There is hereby created in the Automotive Repair  
 12 Fund a Certification Account. Fees collected pursuant to  
 13 this section shall be deposited in the Certification  
 14 Account and shall be available, upon appropriation by the  
 15 Legislature, exclusively to pay the expenses incurred by  
 16 the bureau in administering this chapter. If at the  
 17 conclusion of any fiscal year the amount of fees collected  
 18 exceeds the amount of expenditures for that purpose  
 19 during that fiscal year, the surplus in the Certification  
 20 Account shall be carried over into the succeeding fiscal  
 21 year.

22 (b) Beginning July 1, 1988, every applicant for a  
 23 license as a manufacturer, manufacturer branch,  
 24 distributor, or distributor branch, and every applicant for  
 25 the renewal of a license as a manufacturer, manufacturer  
 26 branch, distributor, or distributor branch, shall  
 27 accompany the application with a statement of the  
 28 number of motor vehicles sold, leased, or otherwise  
 29 distributed by or for the applicant in this state during the  
 30 preceding calendar year, together with a breakdown by  
 31 make, model, and model year and any other information  
 32 that the New Motor Vehicle Board may require, and shall  
 33 pay to the Department of Motor Vehicles, for each  
 34 issuance or renewal of the license, an amount prescribed  
 35 by the New Motor Vehicle Board, but not to exceed one  
 36 dollar (\$1) for each motor vehicle sold, leased, or  
 37 distributed by or for the applicant in this state during the  
 38 preceding calendar year. The total fee paid by each  
 39 licensee shall be rounded to the nearest dollar in the  
 40 manner described in Section 9559 of the Vehicle Code.



1 No more than one dollar (\$1) shall be charged, collected,  
2 or received from any one or more licensees pursuant to  
3 this subdivision with respect to the same motor vehicle.

4 (c) On or before January 1 of each calendar year, the  
5 bureau shall determine the dollar amount, not to exceed  
6 one dollar (\$1) per motor vehicle, which shall be  
7 collected and received by the Department of Motor  
8 Vehicles beginning July 1 of that year, based upon an  
9 estimate of the number of sales, leases, and other  
10 dispositions of motor vehicles in this state during the  
11 preceding calendar year, in order to fully fund the  
12 program established by this chapter during the following  
13 fiscal year. The bureau shall notify the New Motor  
14 Vehicle Board of the dollar amount per motor vehicle  
15 that the New Motor Vehicle Board shall use in calculating  
16 the amounts of the fees to be collected from applicants  
17 pursuant to this subdivision.

18 (d) For the purposes of this section, "motor vehicle"  
19 means a new passenger or commercial motor vehicle of  
20 a kind that is required to be registered under the Vehicle  
21 Code, but the term does not include a motorcycle, a  
22 motor home, or any vehicle whose gross weight exceeds  
23 10,000 pounds.

24 (e) The New Motor Vehicle Board may adopt  
25 regulations to implement this section.

26 SEC. 2. Section 1793.2 of the Civil Code is amended  
27 to read:

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

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

38 As a means of complying with this paragraph, a  
39 manufacturer may enter into warranty service contracts  
40 with independent service and repair facilities. The

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

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

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

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

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



1 of attachment, or method of installation, or nature of the  
 2 nonconformity, delivery cannot reasonably be  
 3 accomplished. If the buyer cannot return the  
 4 nonconforming goods for any of these reasons, he or she  
 5 shall notify the manufacturer or its nearest service and  
 6 repair facility within the state. Written notice of  
 7 nonconformity to the manufacturer or its service and  
 8 repair facility shall constitute return of the goods for  
 9 purposes of this section. Upon receipt of such notice of  
 10 nonconformity the manufacturer shall, at its option,  
 11 service or repair the goods at the buyer's residence, or  
 12 pick up the goods for service and repair, or arrange for  
 13 transporting the goods to its service and repair facility.  
 14 All reasonable costs of transporting the goods when a  
 15 buyer cannot return them for any of the above reasons  
 16 shall be at the manufacturer's expense. The reasonable  
 17 costs of transporting nonconforming goods after delivery  
 18 to the service and repair facility until return of the goods  
 19 to the buyer shall be at the manufacturer's expense.  
 20 (d) (1) Except as provided in paragraph (2), if the  
 21 manufacturer or its representative in this state does not  
 22 service or repair the goods to conform to the applicable  
 23 express warranties after a reasonable number of  
 24 attempts, the manufacturer shall either replace the goods  
 25 or reimburse the buyer in an amount equal to the  
 26 purchase price paid by the buyer, less that amount  
 27 directly attributable to use by the buyer prior to the  
 28 discovery of the nonconformity.  
 29 (2) If the manufacturer or its representative in this  
 30 state is unable to service or repair a new motor vehicle,  
 31 as that term is defined in subparagraph (B) of paragraph  
 32 (4) of subdivision (e), to conform to the applicable  
 33 express warranties after a reasonable number of  
 34 attempts, the manufacturer shall either promptly replace  
 35 the new motor vehicle in accordance with subparagraph  
 36 (A) or promptly make restitution to the buyer in  
 37 accordance with subparagraph (B). However, the buyer  
 38 shall be free to elect restitution in lieu of replacement,  
 39 and in no event shall the buyer be required by the  
 40 manufacturer to accept a replacement vehicle.

1 (A) In the case of replacement, the manufacturer shall  
 2 replace the buyer's vehicle with a new motor vehicle  
 3 substantially identical to the vehicle replaced. The  
 4 replacement vehicle shall be accompanied by all express  
 5 and implied warranties that normally accompany new  
 6 motor vehicles of that specific kind. The manufacturer  
 7 also shall pay for, or to, the buyer the amount of any sales  
 8 or use tax, license fees, registration fees, and other official  
 9 fees which the buyer is obligated to pay in connection  
 10 with the replacement, plus any incidental damages to  
 11 which the buyer is entitled under Section 1794, including,  
 12 but not limited to, reasonable repair, towing, and rental  
 13 car costs actually incurred by the buyer.  
 14 (B) In the case of restitution, the manufacturer shall  
 15 make restitution in an amount equal to the actual price  
 16 paid or payable by the buyer, including any charges for  
 17 transportation and manufacturer-installed options, but  
 18 excluding nonmanufacturer items installed by a dealer or  
 19 the buyer, and including any collateral charges such as  
 20 sales tax, license fees, registration fees, and other official  
 21 fees, plus any incidental damages to which the buyer is  
 22 entitled under Section 1794, including, but not limited to,  
 23 reasonable repair, towing, and rental car costs actually  
 24 incurred by the buyer.  
 25 (C) When the manufacturer replaces the new motor  
 26 vehicle pursuant to subparagraph (A), ~~the manufacturer~~  
 27 ~~may require the buyer to reimburse the manufacturer in~~  
 28 *the buyer shall only be liable to pay the manufacturer an*  
 29 amount directly attributable to use by the buyer of the  
 30 replaced vehicle prior to the time the buyer first  
 31 delivered the vehicle to the manufacturer or distributor,  
 32 or its authorized service and repair facility for correction  
 33 of the problem that gave rise to the nonconformity.  
 34 When restitution is made pursuant to subparagraph (B),  
 35 the amount to be paid by the manufacturer to the buyer  
 36 may be reduced by the manufacturer by that amount  
 37 directly attributable to use by the buyer prior to the time  
 38 the buyer first delivered the vehicle to the manufacturer  
 39 or distributor, or its authorized service and repair facility  
 40 for correction of the problem that gave rise to the



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

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

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

28 (3) A qualified third party dispute resolution process  
 29 ~~shall meet all of the following criteria:~~ shall do all of the  
 30 following:

31 (A) ~~The process complies~~ Comply with the minimum  
 32 requirements of the Federal Trade Commission for  
 33 informal dispute settlement procedures as set forth in  
 34 Part 703 of Title 16 of the Code of Federal Regulations,  
 35 as those regulations read on January 1, 1987.

36 (B) ~~The process renders~~ Render decisions which are  
 37 binding on the manufacturer if the buyer elects to accept  
 38 the decision.

39 (C) ~~Prescribes~~ Prescribe a reasonable time, not to  
 40 exceed 30 days after the decision is ~~accepted~~ accepted by





1 the buyer, within which the manufacturer or its agent  
2 must fulfill the terms of its decisions.

3 ~~(D) The process provides written materials to those~~  
4 ~~individuals who conduct investigations and who make, or~~  
5 ~~participate in making, decisions for the program which,~~  
6 ~~at a minimum include~~

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

14 (E) ~~The process provides~~ Require the manufacturer,  
15 when the process orders either that the nonconforming  
16 motor vehicle be replaced if the buyer consents to this  
17 remedy or that restitution be made to the buyer, to  
18 replace the motor vehicle or make restitution in  
19 accordance with paragraph (2) of subdivision (d).

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

25 ~~(F) The process renders~~

26 (G) Render decisions which consider and provide the  
27 rights and remedies conferred in regulations of the  
28 Federal Trade Commission contained in Part 703 of Title  
29 16 of the Code of Federal Regulations as those regulations  
30 read on January 1, 1987, Division 2 (commencing with  
31 Section 2101) of the Commercial Code, and this chapter.  
32 Nothing in this chapter requires that, to be certified as a  
33 qualified third party dispute resolution process pursuant  
34 to this section, decisions of the process must consider or  
35 provide remedies in the form of awards of punitive  
36 damages or multiple damages, under subdivision (c) of  
37 Section 1794, or of attorney's fees under subdivision (d)  
38 of Section 1794, or of consequential damages other than  
39 as provided in subdivisions (a) and (b) of Section 1794,  
40 including, but not limited to, reasonable repair, towing

1 and rental car costs actually incurred by the buyer.

2 ~~(G) The process has been certified~~

3 (H) Obtain and maintain certification by the Bureau  
4 of Automotive Repair pursuant to Chapter 20.5  
5 (commencing with Section 9889.70 9889.70) of Division 3  
6 of the Business and Professions Code.

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

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

13 (B) "New motor vehicle" means a new motor vehicle  
14 which is used or bought for use primarily for personal,  
15 family, or household purposes. "New motor vehicle"  
16 includes a dealer-owned vehicle and a "demonstrator" or  
17 other motor vehicle sold with a manufacturer's new car  
18 warranty but does not include a motorcycle, a  
19 motorhome, or a motor vehicle which is not registered  
20 under the Vehicle Code because it is to be operated or  
21 used exclusively off the highways. A "demonstrator" is a  
22 vehicle assigned by a dealer for the purpose of  
23 demonstrating qualities and characteristics common to  
24 vehicles of the same or similar model and type.

25 (5) No person shall sell or lease a motor vehicle  
26 transferred by a buyer or lessee to a manufacturer as the  
27 result of a nonconformity unless the nature of the  
28 nonconformity experienced by the original buyer or  
29 lessee is clearly and conspicuously disclosed, the  
30 nonconformity is corrected, and the manufacturer  
31 warrants to the new buyer or lessee in writing for a  
32 period of one year that the motor vehicle is free of that  
33 nonconformity.

34 SEC. 3. Section 1793.25 is added to the Civil Code, to  
35 read:

36 1793.25. (a) Notwithstanding Part 1 (commencing  
37 with Section 6001) of Division 2 of the Revenue and  
38 Taxation Code, the State Board of Equalization shall  
39 reimburse the manufacturer of a new motor vehicle for  
40 an amount equal to the sales tax which the manufacturer



1 includes in making restitution to the buyer pursuant to  
 2 subparagraph (B) or paragraph (2) of subdivision (d) of  
 3 Section 1793.2, when satisfactory proof is provided that  
 4 the retailer of the motor vehicle for which the  
 5 manufacturer is making restitution has reported and paid  
 6 the sales tax on the gross receipts from the sale of that  
 7 motor vehicle. The State Board of Equalization may  
 8 adopt rules and regulations to carry out, facilitate  
 9 compliance with, or prevent circumvention or evasion of,  
 10 this section.

11 (b) Nothing in this section shall in any way change the  
 12 application of the sales and use tax to the gross receipts  
 13 and the sales price from the sale, and the storage, use, or  
 14 other consumption, in this state or tangible personal  
 15 property pursuant to Part 1 (commencing with Section  
 16 6001) of Division 2 of the Revenue and Taxation Code.

17 (c) The manufacturer's claim for reimbursement and  
 18 the board's approval or denial of the claim shall be subject  
 19 to the provisions of Article 1 (commencing with Section  
 20 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue  
 21 and Taxation Code, except Sections 6902.1, 6903, 6907,  
 22 and 6908 thereof, insofar as those provisions are not  
 23 inconsistent with this section.

24 SEC. 4. Section 1794 of the Civil Code is amended to  
 25 read:

26 1794. (a) Any buyer of consumer goods who is  
 27 damaged by a failure to comply with any obligation  
 28 under this chapter or under an implied or express  
 29 warranty or service contract may bring an action for the  
 30 recovery of damages and other legal and equitable relief.

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

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

37 (2) Where the buyer has accepted the goods, Sections  
 38 2714 and 2715 of the Commercial Code shall apply, and  
 39 the measure of damages shall include the cost of repairs  
 40 necessary to make the goods conform.

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

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

19 (e) In addition to the recovery of actual damages, the  
 20 buyer shall recover a civil penalty of two times the  
 21 amount of actual damages and reasonable attorney's fees  
 22 and costs if the manufacturer fails to rebut the  
 23 presumption established in paragraph (1) of subdivision  
 24 (e) of Section 1793.2 and either (1) the manufacturer  
 25 does not maintain a qualified third party dispute  
 26 resolution process which complies with subdivision (e) of  
 27 Section 1793.2, or (2) the manufacturer's qualified third  
 28 party dispute resolution process fails to comply with  
 29 subdivision (e) of Section 1793.2 in the buyer's case.

30 SEC. 5. Section 7102 of the Revenue and Taxation  
 31 Code is amended to read:

32 7102. The money in the fund shall, upon order of the  
 33 Controller, be drawn therefrom for refunds under this  
 34 part, and pursuant to Section 1793.25 of the Civil Code, or  
 35 be transferred in the following manner:

36 (a) (1) All revenues, less refunds, derived under this  
 37 part at the 4¾ percent rate, including the imposition of  
 38 sales and use taxes with respect to the sale, storage, use,  
 39 or other consumption of motor vehicle fuel which would  
 40 not have been received if the sales and use tax rate had



1 been 5 percent and if motor vehicle fuel, as defined for  
 2 purposes of the Motor Vehicle Fuel License Tax Law  
 3 (Part 2 (commencing with Section 7301)), had been  
 4 exempt from sales and use taxes, shall be estimated by the  
 5 State Board of Equalization, with the concurrence of the  
 6 Department of Finance shall be transferred during each  
 7 fiscal year to the Transportation Planning and  
 8 Development Account in the State Transportation Fund  
 9 for appropriation pursuant to Section 99312 of the Public  
 10 Utilities Code.

11 (2) If the amount transferred pursuant to paragraph  
 12 (1) is less than one hundred ten million dollars  
 13 (\$110,000,000) in any fiscal year, an additional amount  
 14 equal to the difference between one hundred ten million  
 15 dollars (\$110,000,000) and the amount so transferred shall  
 16 be transferred, to the extent funds are available, as  
 17 follows:

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

20 (B) For the 1987-88 and each subsequent fiscal year,  
 21 from the state revenues due to the imposition of sales and  
 22 use taxes on fuel, as defined for purposes of the Use Fuel  
 23 Tax Law (Part 3 (commencing with Section 8601)).

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

26 (c) The estimate required by subdivision (a) shall be  
 27 based on taxable transactions occurring during a calendar  
 28 year, and the transfers required by subdivision (a) shall  
 29 be made during the fiscal year that commences during  
 30 that same calendar year. Transfers required by  
 31 paragraphs (1) and (2) of subdivision (a) shall be made  
 32 quarterly.

33 ~~SEC. 5.~~

34 **SEC. 6.** Section 3050 of the Vehicle Code is amended  
 35 to read:

36 3050. The board shall do all of the following:

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

1 its jurisdiction.

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

10 (c) Consider any matter concerning the activities or  
 11 practices of any person applying for or holding a license  
 12 as a new motor vehicle dealer, manufacturer,  
 13 manufacturer branch, distributor, distributor branch, or  
 14 representative pursuant to Chapter 4 (commencing with  
 15 Section 11700) of Division 5 submitted by any person. A  
 16 member of the board who is a new motor vehicle dealer  
 17 may not participate in, hear, comment, advise other  
 18 members upon, or decide any matter considered by the  
 19 board pursuant to this subdivision that involves a dispute  
 20 between a franchisee and franchisor. After such  
 21 consideration, the board may do any one or any  
 22 combination of the following:

23 (1) Direct the department to conduct investigation of  
 24 matters that the board deems reasonable, and make a  
 25 written report on the results of the investigation to the  
 26 board within the time specified by the board.

27 (2) Undertake to mediate, arbitrate, or otherwise  
 28 resolve any honest difference of opinion or viewpoint  
 29 existing between any member of the public and any new  
 30 motor vehicle dealer, manufacturer, manufacturer  
 31 branch, distributor branch, or representative.

32 (3) Order the department to exercise any and all  
 33 authority or power that the department may have with  
 34 respect to the issuance, renewal, refusal to renew,  
 35 suspension, or revocation of the license of any new motor  
 36 vehicle dealer, manufacturer, manufacturer branch,  
 37 distributor, distributor branch, or representative as such  
 38 license is required under Chapter 4 (commencing with  
 39 Section 11700) of Division 5.

40 (d) Hear and consider, within the limitations and in





AMENDED IN ASSEMBLY MAY 13, 1987  
AMENDED IN ASSEMBLY APRIL 28, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2057**

Introduced by Assembly Member Tanner

March 6, 1987

An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable



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express warranties after a reasonable number of attempts. The bill would revise the definitions of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lesser to a manufacturer for a nonconformity, as defined, except as specified. The bill would also make related changes.

The bill would create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.

This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also require the award of civil penalties, as specified, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
6 DISPUTE RESOLUTION PROCESSES

7  
8 9889.70. Unless the context requires otherwise, the  
9 following definitions govern the construction of this  
10 chapter:

11 (a) "Bureau" means the Bureau of Automotive  
12 Repair.

13 (b) "New motor vehicle" means a new motor vehicle  
14 as defined in subparagraph (B) of paragraph (4) of  
15 subdivision (e) of Section 1793.2 of the Civil Code.

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

21 (d) "Qualified third party dispute resolution process"  
22 means a third party dispute resolution process which  
23 operates in compliance with paragraph (3) of subdivision  
24 (e) of Section 1793.2 of the Civil Code and this chapter  
25 and which has been certified by the bureau pursuant to  
26 this chapter.

27 9889.71. The bureau shall establish a program for  
28 certifying each third party dispute resolution process  
29 used for the arbitration of disputes pursuant to paragraph  
30 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
31 In establishing the program, the bureau shall do all of the  
32 following:

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

35 (b) Establish a set of minimum standards which shall  
36 be used to determine whether a third party dispute  
37 resolution process is in compliance with paragraph (3) of  
38 subdivision (e) of Section 1793.2 of the Civil Code and



1 this chapter.

2 (c) Prescribe the information which each  
3 manufacturer, or other entity, that uses a third party  
4 dispute resolution process, and that applies to have that  
5 process certified by the bureau, shall provide the bureau  
6 in the application for certification. In prescribing the  
7 information to accompany the application for  
8 certification, the bureau shall require the manufacturer,  
9 or other entity, to provide only that information which  
10 the bureau finds is reasonably necessary to enable the  
11 bureau to determine whether the third party dispute  
12 resolution process is in compliance with paragraph (3) of  
13 subdivision (e) of Section 1793.2 of the Civil Code and  
14 this chapter.

15 (d) Prescribe the information that each qualified third  
16 party dispute resolution process shall provide the bureau,  
17 and the time intervals at which the information shall be  
18 required, to enable the bureau to determine whether the  
19 qualified third party dispute resolution process continues  
20 to operate in compliance with paragraph (3) of  
21 subdivision (e) of Section 1793.2 of the Civil Code and  
22 this chapter.

23 9889.72. (a) Each manufacturer may establish, or  
24 otherwise make available to buyers or lessees of new  
25 motor vehicles, a qualified third party dispute resolution  
26 process for the resolution of disputes pursuant to  
27 paragraph (2) of subdivision (e) of Section 1793.2 of the  
28 Civil Code. The manufacturer, or other entity, which  
29 operates the third party dispute resolution process shall  
30 apply to the bureau for certification of that process. The  
31 application for certification shall be accompanied by the  
32 information prescribed by the bureau.

33 (b) The bureau shall review the application and  
34 accompanying information and, after conducting an  
35 onsite inspection, shall determine whether the third  
36 party dispute resolution process is in compliance with  
37 paragraph (3) of subdivision (e) of Section 1793.2 of the  
38 Civil Code and this chapter. If the bureau determines  
39 that the process is in compliance, the bureau shall certify  
40 the process. If the bureau determines that the process is

1 not in compliance, the bureau shall deny certification and  
2 shall state, in writing, the reasons for denial and the  
3 modifications in the operation of the process that are  
4 required in order for the process to be certified.

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

10 9889.73. (a) The bureau, in accordance with the time  
11 intervals prescribed pursuant to subdivision (d) of  
12 Section 9889.71, but at least once annually, shall review  
13 the operation and performance of each qualified third  
14 party dispute resolution process and determine, using the  
15 information provided the bureau as prescribed pursuant  
16 to subdivision (d) of Section 9889.71 and the monitoring  
17 and inspection information described in subdivision (c)  
18 of Section 9889.74, whether the process is operating in  
19 compliance with paragraph (3) of subdivision (e) of  
20 Section 1793.2 of the Civil Code and this chapter. If the  
21 bureau determines that the process is in compliance, the  
22 certification shall remain in effect.

23 (b) If the bureau determines that the process is not in  
24 compliance with paragraph (3) of subdivision (e) of  
25 Section 1793.2 of the Civil Code or this chapter, the  
26 bureau shall issue a notice of decertification to the  
27 manufacturer, or other entity, which uses that process.  
28 The notice of decertification shall state the reasons for the  
29 issuance of the notice and prescribe the modifications in  
30 the operation of the process that are required in order for  
31 the process to retain its certification.

32 (c) A notice of decertification shall take effect 180  
33 calendar days following the date the notice is served on  
34 the manufacturer, or other entity, which uses the process  
35 that the bureau has determined is not in compliance with  
36 paragraph (3) of subdivision (e) of Section 1793.2 of the  
37 Civil Code or this chapter. The bureau shall withdraw the  
38 notice of decertification prior to its effective date if the  
39 bureau determines, after a public hearing, that the  
40 manufacturer, or other entity, which uses the process has

1 made the modifications in the operation of the process  
2 required in the notice of decertification and is in  
3 compliance with paragraph (3) of subdivision (e) of  
4 Section 1793.2 of the Civil Code and this chapter.

5 9889.74. In addition to any other requirements of this  
6 chapter, the bureau shall do all of the following:

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

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

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

21 (1) Onsite inspections of each certified process not less  
22 frequently than twice annually.

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

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

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

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

1 (f) Adopt regulations as necessary and appropriate to  
2 implement the provisions of this chapter.

3 9889.75. The New Motor Vehicle Board in the  
4 Department of Motor Vehicles shall, in accordance with  
5 the procedures prescribed in this section, administer the  
6 collection of fees for the purposes of fully funding the  
7 administration of this chapter.

8 (a) There is hereby created in the Automotive Repair  
9 Fund a Certification Account. Fees collected pursuant to  
10 this section shall be deposited in the Certification  
11 Account and shall be available, upon appropriation by the  
12 Legislature, exclusively to pay the expenses incurred by  
13 the bureau in administering this chapter. If at the  
14 conclusion of any fiscal year the amount of fees collected  
15 exceeds the amount of expenditures for that purpose  
16 during that fiscal year, the surplus in the Certification  
17 Account shall be carried over into the succeeding fiscal  
18 year.

19 (b) Beginning July 1, 1988, every applicant for a  
20 license as a manufacturer, manufacturer branch,  
21 distributor, or distributor branch, and every applicant for  
22 the renewal of a license as a manufacturer, manufacturer  
23 branch, distributor, or distributor branch, shall  
24 accompany the application with a statement of the  
25 number of motor vehicles sold, leased, or otherwise  
26 distributed by or for the applicant in this state during the  
27 preceding calendar year, together with a breakdown by  
28 make, model, and model year and any other information  
29 that the New Motor Vehicle Board may require, and shall  
30 pay to the Department of Motor Vehicles, for each  
31 issuance or renewal of the license, an amount prescribed  
32 by the New Motor Vehicle Board, but not to exceed one  
33 dollar (\$1) for each motor vehicle sold, leased, or  
34 distributed by or for the applicant in this state during the  
35 preceding calendar year. The total fee paid by each  
36 licensee shall be rounded to the nearest dollar in the  
37 manner described in Section 9559 of the Vehicle Code.  
38 No more than one dollar (\$1) shall be charged, collected,  
39 or received from any one or more licensees pursuant to  
40 this subdivision with respect to the same motor vehicle.





1 (c) On or before January 1 of each calendar year, the  
 2 bureau shall determine the dollar amount, not to exceed  
 3 one dollar (\$1) per motor vehicle, which shall be  
 4 collected and received by the Department of Motor  
 5 Vehicles beginning July 1 of that year, based upon an  
 6 estimate of the number of sales, leases, and other  
 7 dispositions of motor vehicles in this state during the  
 8 preceding calendar year, in order to fully fund the  
 9 program established by this chapter during the following  
 10 fiscal year. The bureau shall notify the New Motor  
 11 Vehicle Board of the dollar amount per motor vehicle  
 12 that the New Motor Vehicle Board shall use in calculating  
 13 the amounts of the fees to be collected from applicants  
 14 pursuant to this subdivision.

15 (d) For the purposes of this section, "motor vehicle"  
 16 means a new passenger or commercial motor vehicle of  
 17 a kind that is required to be registered under the Vehicle  
 18 Code, but the term does not include a motorcycle, a  
 19 motor home, or any vehicle whose gross weight exceeds  
 20 10,000 pounds.

21 (e) The New Motor Vehicle Board may adopt  
 22 regulations to implement this section.

23 SEC. 2. Section 1793.2 of the Civil Code is amended  
 24 to read:

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

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

35 As a means of complying with this paragraph, a  
 36 manufacturer may enter into warranty service contracts  
 37 with independent service and repair facilities. The  
 38 warranty service contracts may provide for a fixed  
 39 schedule of rates to be charged for warranty service or  
 40 warranty repair work, however, the rates fixed by such

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

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

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

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

35 (c) The buyer shall deliver nonconforming goods to  
 36 the manufacturer's service and repair facility within this  
 37 state, unless, due to reasons of size and weight, or method  
 38 of attachment, or method of installation, or nature of the  
 39 nonconformity, delivery cannot reasonably be  
 40 accomplished. If the buyer cannot return the



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

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

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

38 (A) In the case of replacement, the manufacturer shall  
 39 replace the buyer's vehicle with a new motor vehicle  
 40 substantially identical to the vehicle replaced. The

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

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

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



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

10 (e) (1) It shall be presumed that a reasonable number  
 11 of attempts have been made to conform a new motor  
 12 vehicle to the applicable express warranties if, within one  
 13 year from delivery to the buyer or 12,000 miles on the  
 14 odometer of the vehicle, whichever occurs first, either

15 (A) the same nonconformity has been subject to repair  
 16 four or more times by the manufacturer or its agents and  
 17 the buyer has at least once directly notified the  
 18 manufacturer of the need for the repair of the  
 19 nonconformity, or (B) the vehicle is out of service by  
 20 reason of repair of nonconformities by the manufacturer  
 21 or its agents for a cumulative total of more than 30  
 22 calendar days since delivery of the vehicle to the buyer.  
 23 The 30-day limit shall be extended only if repairs cannot  
 24 be performed due to conditions beyond the control of the  
 25 manufacturer or its agents. The buyer shall be required  
 26 to directly notify the manufacturer pursuant to  
 27 subparagraph (A) only if the manufacturer has clearly  
 28 and conspicuously disclosed to the buyer, with the  
 29 warranty or the owner's manual, the provisions of this  
 30 subdivision and that of subdivision (d), including the  
 31 requirement that the buyer must notify the  
 32 manufacturer directly pursuant to subparagraph (A).  
 33 This presumption shall be a rebuttable presumption  
 34 affecting the burden of proof, and it may be asserted by  
 35 the buyer in any civil action, including an action in small  
 36 claims court, or other formal or informal proceeding.

37 (2) If a qualified third party dispute resolution process  
 38 exists, and the buyer receives timely notification in  
 39 writing of the availability of a third party process with a  
 40 description of its operation and effect, the presumption

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

24 (3) A qualified third party dispute resolution process  
 25 shall do all of the following:

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

31 (B) Render decisions which are binding on the  
 32 manufacturer if the buyer elects to accept the decision.

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

37 (D) Provide arbitrators who are assigned to decide  
 38 disputes with copies of, and instruction in, the provisions  
 39 of the Federal Trade Commission's regulations in Part  
 40 703 of Title 16 of the Code of Federal Regulations as those



1 regulations read on January 1, 1987, Division 2  
2 (commencing with Section 2101) of the Commercial  
3 Code, and this chapter.

4 (E) Require the manufacturer, when the process  
5 orders either that the nonconforming motor vehicle be  
6 replaced if the buyer consents to this remedy or that  
7 restitution be made to the buyer, to replace the motor  
8 vehicle or make restitution in accordance with paragraph  
9 (2) of subdivision (d).

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

15 (G) Render decisions which consider and provide the  
16 rights and remedies conferred in regulations of the  
17 Federal Trade Commission contained in Part 703 of Title  
18 16 of the Code of Federal Regulations as those regulations  
19 read on January 1, 1987, Division 2 (commencing with  
20 Section 2101) of the Commercial Code, and this chapter.  
21 Nothing in this chapter requires that, to be certified as a  
22 qualified third party dispute resolution process pursuant  
23 to this section, decisions of the process must consider or  
24 provide remedies in the form of awards of punitive  
25 damages or multiple damages, under subdivision (c) of  
26 Section 1794, or of attorney's fees under subdivision (d)  
27 of Section 1794, or of consequential damages other than  
28 as provided in subdivisions (a) and (b) of Section 1794,  
29 including, but not limited to, reasonable repair, towing  
30 and rental car costs actually incurred by the buyer.

31 (H) Obtain and maintain certification by the Bureau  
32 of Automotive Repair pursuant to Chapter 20.5  
33 (commencing with Section 9889.70) of Division 3 of the  
34 Business and Professions Code.

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

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

1 (B) "New motor vehicle" means a new motor vehicle  
2 which is used or bought for use primarily for personal,  
3 family, or household purposes. "New motor vehicle"  
4 includes a dealer-owned vehicle and a "demonstrator" or  
5 other motor vehicle sold with a manufacturer's new car  
6 warranty but does not include a motorcycle, a  
7 motorhome, or a motor vehicle which is not registered  
8 under the Vehicle Code because it is to be operated or  
9 used exclusively off the highways. A "demonstrator" is a  
10 vehicle assigned by a dealer for the purpose of  
11 demonstrating qualities and characteristics common to  
12 vehicles of the same or similar model and type.

13 (5) No person shall sell or lease a motor vehicle  
14 transferred by a buyer or lessee to a manufacturer as the  
15 result of a nonconformity unless the nature of the  
16 nonconformity experienced by the original buyer or  
17 lessee is clearly and conspicuously disclosed, the  
18 nonconformity is corrected, and the manufacturer  
19 warrants to the new buyer or lessee in writing for a  
20 period of one year that the motor vehicle is free of that  
21 nonconformity.

22 SEC. 3. Section 1793.25 is added to the Civil Code, to  
23 read:

24 1793.25. (a) Notwithstanding Part 1 (commencing  
25 with Section 6001) of Division 2 of the Revenue and  
26 Taxation Code, the State Board of Equalization shall  
27 reimburse the manufacturer of a new motor vehicle for  
28 an amount equal to the sales tax which the manufacturer  
29 includes in making restitution to the buyer pursuant to  
30 subparagraph (B) of paragraph (2) of subdivision (d)  
31 of Section 1793.2, when satisfactory proof is provided that  
32 the retailer of the motor vehicle for which the  
33 manufacturer is making restitution has reported and paid  
34 the sales tax on the gross receipts from the sale of that  
35 motor vehicle. The State Board of Equalization may  
36 adopt rules and regulations to carry out, facilitate  
37 compliance with, or prevent circumvention or evasion of,  
38 this section.

39 (b) Nothing in this section shall in any way change the  
40 application of the sales and use tax to the gross receipts



1 and the sales price from the sale, and the storage, use, or  
 2 other consumption, in this state or tangible personal  
 3 property pursuant to Part 1 (commencing with Section  
 4 6001) of Division 2 of the Revenue and Taxation Code.

5 (c) The manufacturer's claim for reimbursement and  
 6 the board's approval or denial of the claim shall be subject  
 7 to the provisions of Article 1 (commencing with Section  
 8 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue  
 9 and Taxation Code, except Sections 6902.1, 6903, 6907,  
 10 and 6908 thereof, insofar as those provisions are not  
 11 inconsistent with this section.

12 SEC. 4. Section 1794 of the Civil Code is amended to  
 13 read:

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

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

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

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

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

37 (d) If the buyer prevails in an action under this  
 38 section, the buyer shall be allowed by the court to recover  
 39 as part of the judgment a sum equal to the aggregate  
 40 amount of costs and expenses, including attorney's fees

1 based on actual time expended, determined by the court  
 2 to have been reasonably incurred by the buyer in  
 3 connection with the commencement and prosecution of  
 4 such action.

5 (e) In addition to the recovery of actual damages, the  
 6 buyer shall recover a civil penalty of two times the  
 7 amount of actual damages and reasonable attorney's fees  
 8 and costs if the manufacturer fails to rebut the  
 9 presumption established in paragraph (1) of subdivision  
 10 (e) of Section 1793.2 and either (1) the manufacturer  
 11 does not maintain a qualified third party dispute  
 12 resolution process which complies with subdivision (e) of  
 13 Section 1793.2, or (2) the manufacturer's qualified third  
 14 party dispute resolution process *willfully* fails to comply  
 15 with subdivision (e) of Section 1793.2 in the buyer's case.

16 SEC. 5. Section 7102 of the Revenue and Taxation  
 17 Code is amended to read:

18 7102. The money in the fund shall, upon order of the  
 19 Controller, be drawn therefrom for refunds under this  
 20 part, and pursuant to Section 1793.25 of the Civil Code, or  
 21 be transferred in the following manner:

22 (a) (1) All revenues, less refunds, derived under this  
 23 part at the 4¾ percent rate, including the imposition of  
 24 sales and use taxes with respect to the sale, storage, use,  
 25 or other consumption of motor vehicle fuel which would  
 26 not have been received if the sales and use tax rate had  
 27 been 5 percent and if motor vehicle fuel, as defined for  
 28 purposes of the Motor Vehicle Fuel License Tax Law  
 29 (Part 2 (commencing with Section 7301)), had been  
 30 exempt from sales and use taxes, shall be estimated by the  
 31 State Board of Equalization, with the concurrence of the  
 32 Department of Finance shall be transferred during each  
 33 fiscal year to the Transportation Planning and  
 34 Development Account in the State Transportation Fund  
 35 for appropriation pursuant to Section 99312 of the Public  
 36 Utilities Code.

37 (2) If the amount transferred pursuant to paragraph  
 38 (1) is less than one hundred ten million dollars  
 39 (\$110,000,000) in any fiscal year, an additional amount  
 40 equal to the difference between one hundred ten million



1 dollars (\$110,000,000) and the amount so transferred shall  
 2 be transferred, to the extent funds are available, as  
 3 follows:

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

6 (B) For the 1987-88 and each subsequent fiscal year,  
 7 from the state revenues due to the imposition of sales and  
 8 use taxes on fuel, as defined for purposes of the Use Fuel  
 9 Tax Law (Part 3 (commencing with Section 8601)).

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

12 (c) The estimate required by subdivision (a) shall be  
 13 based on taxable transactions occurring during a calendar  
 14 year, and the transfers required by subdivision (a) shall  
 15 be made during the fiscal year that commences during  
 16 that same calendar year. Transfers required by  
 17 paragraphs (1) and (2) of subdivision (a) shall be made  
 18 quarterly.

19 SEC. 6. Section 3050 of the Vehicle Code is amended  
 20 to read:

21 3050. The board shall do all of the following:

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

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

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

1 member of the board who is a new motor vehicle dealer  
 2 may not participate in, hear, comment, advise other  
 3 members upon, or decide any matter considered by the  
 4 board pursuant to this subdivision that involves a dispute  
 5 between a franchisee and franchisor. After such  
 6 consideration, the board may do any one or any  
 7 combination of the following:

8 (1) Direct the department to conduct investigation of  
 9 matters that the board deems reasonable, and make a  
 10 written report on the results of the investigation to the  
 11 board within the time specified by the board.

12 (2) Undertake to mediate, arbitrate, or otherwise  
 13 resolve any honest difference of opinion or viewpoint  
 14 existing between any member of the public and any new  
 15 motor vehicle dealer, manufacturer, manufacturer  
 16 branch, distributor branch, or representative.

17 (3) Order the department to exercise any and all  
 18 authority or power that the department may have with  
 19 respect to the issuance, renewal, refusal to renew,  
 20 suspension, or revocation of the license of any new motor  
 21 vehicle dealer, manufacturer, manufacturer branch,  
 22 distributor, distributor branch, or representative as such  
 23 license is required under Chapter 4 (commencing with  
 24 Section 11700) of Division 5.

25 (d) Hear and consider, within the limitations and in  
 26 accordance with the procedure provided, a protest  
 27 presented by a franchisee pursuant to Section 3060, 3062,  
 28 3064, or 3065. A member of the board who is a new motor  
 29 vehicle dealer may not participate in, hear, comment,  
 30 advise other members upon, or decide, any matter  
 31 involving a protest filed pursuant to Article 4  
 32 (commencing with Section 3060).



AMENDED IN ASSEMBLY JUNE 11, 1987  
AMENDED IN ASSEMBLY MAY 13, 1987  
AMENDED IN ASSEMBLY APRIL 28, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2057**

Introduced by Assembly Member Tanner

March 6, 1987

An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its



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representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. The bill would, *on July 1, 1988*, revise the definitions of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lesser to a manufacturer for a nonconformity, as defined, except as specified. The bill would also make related changes.

The bill would, *on July 1, 1988*, create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.

This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also require the award of civil penalties, as specified, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

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



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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
6 DISPUTE RESOLUTION PROCESSES  
7

8 9889.70. Unless the context requires otherwise, the  
9 following definitions govern the construction of this  
10 chapter:

11 (a) "Bureau" means the Bureau of Automotive  
12 Repair.

13 (b) "New motor vehicle" means a new motor vehicle  
14 as defined in subparagraph (B) of paragraph (4) of  
15 subdivision (e) of Section 1793.2 of the Civil Code.

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

21 (d) "Qualified third party dispute resolution process"  
22 means a third party dispute resolution process which  
23 operates in compliance with paragraph (3) of subdivision  
24 (e) of Section 1793.2 of the Civil Code and this chapter  
25 and which has been certified by the bureau pursuant to  
26 this chapter.

27 9889.71. The bureau shall establish a program for  
28 certifying each third party dispute resolution process  
29 used for the arbitration of disputes pursuant to paragraph  
30 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
31 In establishing the program, the bureau shall do all of the  
32 following:

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

35 (b) Establish a set of minimum standards which shall  
36 be used to determine whether a third party dispute  
37 resolution process is in compliance with paragraph (3) of  
38 subdivision (e) of Section 1793.2 of the Civil Code and



1 this chapter.

2 (c) Prescribe the information which each  
3 manufacturer, or other entity, that uses a third party  
4 dispute resolution process, and that applies to have that  
5 process certified by the bureau, shall provide the bureau  
6 in the application for certification. In prescribing the  
7 information to accompany the application for  
8 certification, the bureau shall require the manufacturer,  
9 or other entity, to provide only that information which  
10 the bureau finds is reasonably necessary to enable the  
11 bureau to determine whether the third party dispute  
12 resolution process is in compliance with paragraph (3) of  
13 subdivision (e) of Section 1793.2 of the Civil Code and  
14 this chapter.

15 (d) Prescribe the information that each qualified third  
16 party dispute resolution process shall provide the bureau,  
17 and the time intervals at which the information shall be  
18 required, to enable the bureau to determine whether the  
19 qualified third party dispute resolution process continues  
20 to operate in compliance with paragraph (3) of  
21 subdivision (e) of Section 1793.2 of the Civil Code and  
22 this chapter.

23 9889.72. (a) Each manufacturer may establish, or  
24 otherwise make available to buyers or lessees of new  
25 motor vehicles, a qualified third party dispute resolution  
26 process for the resolution of disputes pursuant to  
27 paragraph (2) of subdivision (e) of Section 1793.2 of the  
28 Civil Code. The manufacturer, or other entity, which  
29 operates the third party dispute resolution process shall  
30 apply to the bureau for certification of that process. The  
31 application for certification shall be accompanied by the  
32 information prescribed by the bureau.

33 (b) The bureau shall review the application and  
34 accompanying information and, after conducting an  
35 onsite inspection, shall determine whether the third  
36 party dispute resolution process is in compliance with  
37 paragraph (3) of subdivision (e) of Section 1793.2 of the  
38 Civil Code and this chapter. If the bureau determines  
39 that the process is in compliance, the bureau shall certify  
40 the process. If the bureau determines that the process is

1 not in compliance, the bureau shall deny certification and  
2 shall state, in writing, the reasons for denial and the  
3 modifications in the operation of the process that are  
4 required in order for the process to be certified.

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

10 9889.73. (a) The bureau, in accordance with the time  
11 intervals prescribed pursuant to subdivision (d) of  
12 Section 9889.71, but at least once annually, shall review  
13 the operation and performance of each qualified third  
14 party dispute resolution process and determine, using the  
15 information provided the bureau as prescribed pursuant  
16 to subdivision (d) of Section 9889.71 and the monitoring  
17 and inspection information described in subdivision (c)  
18 of Section 9889.74, whether the process is operating in  
19 compliance with paragraph (3) of subdivision (e) of  
20 Section 1793.2 of the Civil Code and this chapter. If the  
21 bureau determines that the process is in compliance, the  
22 certification shall remain in effect.

23 (b) If the bureau determines that the process is not in  
24 compliance with paragraph (3) of subdivision (e) of  
25 Section 1793.2 of the Civil Code or this chapter, the  
26 bureau shall issue a notice of decertification to the  
27 manufacturer, or other entity, which uses that process.  
28 The notice of decertification shall state the reasons for the  
29 issuance of the notice and prescribe the modifications in  
30 the operation of the process that are required in order for  
31 the process to retain its certification.

32 (c) A notice of decertification shall take effect 180  
33 calendar days following the date the notice is served on  
34 the manufacturer, or other entity, which uses the process  
35 that the bureau has determined is not in compliance with  
36 paragraph (3) of subdivision (e) of Section 1793.2 of the  
37 Civil Code or this chapter. The bureau shall withdraw the  
38 notice of decertification prior to its effective date if the  
39 bureau determines, after a public hearing, that the  
40 manufacturer, or other entity, which uses the process has



1 made the modifications in the operation of the process  
2 required in the notice of decertification and is in  
3 compliance with paragraph (3) of subdivision (e) of  
4 Section 1793.2 of the Civil Code and this chapter.

5 9889.74. In addition to any other requirements of this  
6 chapter, the bureau shall do all of the following:

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

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

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

21 (1) Onsite inspections of each certified process not less  
22 frequently than twice annually.

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

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

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

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

1 (f) Adopt regulations as necessary and appropriate to  
2 implement the provisions of this chapter.

3 9889.75. The New Motor Vehicle Board in the  
4 Department of Motor Vehicles shall, in accordance with  
5 the procedures prescribed in this section, administer the  
6 collection of fees for the purposes of fully funding the  
7 administration of this chapter.

8 (a) There is hereby created in the Automotive Repair  
9 Fund a Certification Account. Fees collected pursuant to  
10 this section shall be deposited in the Certification  
11 Account and shall be available, upon appropriation by the  
12 Legislature, exclusively to pay the expenses incurred by  
13 the bureau in administering this chapter. If at the  
14 conclusion of any fiscal year the amount of fees collected  
15 exceeds the amount of expenditures for that purpose  
16 during that fiscal year, the surplus in the Certification  
17 Account shall be carried over into the succeeding fiscal  
18 year.

19 (b) Beginning July 1, 1988, every applicant for a  
20 license as a manufacturer, manufacturer branch,  
21 distributor, or distributor branch, and every applicant for  
22 the renewal of a license as a manufacturer, manufacturer  
23 branch, distributor, or distributor branch, shall  
24 accompany the application with a statement of the  
25 number of motor vehicles sold, leased, or otherwise  
26 distributed by or for the applicant in this state during the  
27 preceding calendar year, together with a breakdown by  
28 make, model, and model year and any other information  
29 that the New Motor Vehicle Board may require, and shall  
30 pay to the Department of Motor Vehicles, for each  
31 issuance or renewal of the license, an amount prescribed  
32 by the New Motor Vehicle Board, but not to exceed one  
33 dollar (\$1) for each motor vehicle sold, leased, or  
34 distributed by or for the applicant in this state during the  
35 preceding calendar year. The total fee paid by each  
36 licensee shall be rounded to the nearest dollar in the  
37 manner described in Section 9559 of the Vehicle Code.  
38 No more than one dollar (\$1) shall be charged, collected,  
39 or received from any one or more licensees pursuant to  
40 this subdivision with respect to the same motor vehicle.



1 (c) On or before January 1 of each calendar year, the  
 2 bureau shall determine the dollar amount, not to exceed  
 3 one dollar (\$1) per motor vehicle, which shall be  
 4 collected and received by the Department of Motor  
 5 Vehicles beginning July 1 of that year, based upon an  
 6 estimate of the number of sales, leases, and other  
 7 dispositions of motor vehicles in this state during the  
 8 preceding calendar year, in order to fully fund the  
 9 program established by this chapter during the following  
 10 fiscal year. The bureau shall notify the New Motor  
 11 Vehicle Board of the dollar amount per motor vehicle  
 12 that the New Motor Vehicle Board shall use in calculating  
 13 the amounts of the fees to be collected from applicants  
 14 pursuant to this subdivision.

15 (d) For the purposes of this section, "motor vehicle"  
 16 means a new passenger or commercial motor vehicle of  
 17 a kind that is required to be registered under the Vehicle  
 18 Code, but the term does not include a motorcycle, a  
 19 motor home, or any vehicle whose gross weight exceeds  
 20 10,000 pounds.

21 (e) The New Motor Vehicle Board may adopt  
 22 regulations to implement this section.

23 9889.76. *This chapter shall become operative on July*  
 24 *1, 1988.*

25 SEC. 2. Section 1793.2 of the Civil Code is amended  
 26 to read:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

39 (2) If a qualified third party dispute resolution process  
 40 exists, and the buyer receives timely notification in

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

26 (3) A qualified third party dispute resolution process  
 27 shall ~~be~~ *be one that does* all of the following:

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

33 (B) ~~Render~~  *Renders* decisions which are binding on  
 34 the manufacturer if the buyer elects to accept the  
 35 decision.

36 (C) ~~Prescribe~~  *Prescribes* a reasonable time, not to  
 37 exceed 30 days after the decision is accepted by the  
 38 buyer, within which the manufacturer or its agent must  
 39 fulfill the terms of its decisions.

40 (D) ~~Provide~~  *Provides* arbitrators who are assigned to



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

7 (E) ~~Require~~ *Requires* the manufacturer, when the  
8 process orders either that the nonconforming motor  
9 vehicle be replaced if the buyer consents to this remedy  
10 or that restitution be made to the buyer, to replace the  
11 motor vehicle or make restitution in accordance with  
12 paragraph (2) of subdivision (d).

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

18 (G) ~~Render~~ *Renders* decisions which consider and  
19 provide the rights and remedies conferred in regulations  
20 of the Federal Trade Commission contained in Part 703  
21 of Title 16 of the Code of Federal Regulations as those  
22 regulations read on January 1, 1987, Division 2  
23 (commencing with Section 2101) of the Commercial  
24 Code, and this chapter. Nothing in this chapter requires  
25 that, to be certified as a qualified third party dispute  
26 resolution process pursuant to this section, decisions of  
27 the process must consider or provide remedies in the  
28 form of awards of punitive damages or multiple damages,  
29 under subdivision (c) of Section 1794, or of attorney's fees  
30 under subdivision (d) of Section 1794, or of consequential  
31 damages other than as provided in subdivisions (a) and  
32 (b) of Section 1794, including, but not limited to,  
33 reasonable repair, towing and rental car costs actually  
34 incurred by the buyer.

35 (H) ~~Obtain and maintain~~ *Requires that no arbitrator*  
36 *deciding a dispute may be a party to the dispute, or an*  
37 *employee, agent, or dealer for the manufacturer; and*  
38 *that no other person, including an employee, agent, or*  
39 *dealer for the manufacturer, may be allowed to*  
40 *participate in formal or informal discussions with the*

1 *arbitrator unless the buyer is allowed to participate*  
2 *equally.*

3 (I) *Requires that in the case of an order for one further*  
4 *repair attempt, a hearing date shall be established no*  
5 *later than 30 days after the repair attempt has been made,*  
6 *to determine whether the manufacturer has corrected*  
7 *the nonconformity. The buyer and the manufacturer*  
8 *shall schedule an opportunity for the manufacturer to*  
9 *effect the ordered repair no later than 30 days after the*  
10 *order for the repair is served on the manufacturer and*  
11 *the buyer. If, at the hearing, it is determined that the*  
12 *manufacturer did not correct the nonconformity, the*  
13 *manufacturer shall be ordered to either replace the*  
14 *motor vehicle, if the buyer consents to this remedy, or to*  
15 *make restitution.*

16 (J) *Obtains and maintains* certification by the Bureau  
17 of Automotive Repair pursuant to Chapter 20.5  
18 (commencing with Section 9889.70) of Division 3 of the  
19 Business and Professions Code.

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

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

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

38 (5) No person shall sell or lease a motor vehicle  
39 transferred by a buyer or lessee to a manufacturer as the  
40 result of a nonconformity unless the nature of the



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

7 SEC. 3. Section 1793.25 is added to the Civil Code, to  
 8 read:

9 1793.25. (a) Notwithstanding Part 1 (commencing  
 10 with Section 6001) of Division 2 of the Revenue and  
 11 Taxation Code, the State Board of Equalization shall  
 12 reimburse the manufacturer of a new motor vehicle for  
 13 an amount equal to the sales tax which the manufacturer  
 14 includes in making restitution to the buyer pursuant to  
 15 subparagraph (B) of paragraph (2) of subdivision (d) of  
 16 Section 1793.2, when satisfactory proof is provided that  
 17 the retailer of the motor vehicle for which the  
 18 manufacturer is making restitution has reported and paid  
 19 the sales tax on the gross receipts from the sale of that  
 20 motor vehicle. The State Board of Equalization may  
 21 adopt rules and regulations to carry out, facilitate  
 22 compliance with, or prevent circumvention or evasion of,  
 23 this section.

24 (b) Nothing in this section shall in any way change the  
 25 application of the sales and use tax to the gross receipts  
 26 and the sales price from the sale, and the storage, use, or  
 27 other consumption, in this state or tangible personal  
 28 property pursuant to Part 1 (commencing with Section  
 29 6001) of Division 2 of the Revenue and Taxation Code.

30 (c) The manufacturer's claim for reimbursement and  
 31 the board's approval or denial of the claim shall be subject  
 32 to the provisions of Article 1 (commencing with Section  
 33 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue  
 34 and Taxation Code, except Sections 6902.1, 6903, 6907,  
 35 and 6908 thereof, insofar as those provisions are not  
 36 inconsistent with this section.

37 SEC. 4. Section 1794 of the Civil Code is amended to  
 38 read:

39 1794. (a) Any buyer of consumer goods who is  
 40 damaged by a failure to comply with any obligation

1 under this chapter or under an implied or express  
 2 warranty or service contract may bring an action for the  
 3 recovery of damages and other legal and equitable relief.

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

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

10 (2) Where the buyer has accepted the goods, Sections  
 11 2714 and 2715 of the Commercial Code shall apply, and  
 12 the measure of damages shall include the cost of repairs  
 13 necessary to make the goods conform.

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

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

30 (e) In addition to the recovery of actual damages, the  
 31 buyer shall recover a civil penalty of two times the  
 32 amount of actual damages and reasonable attorney's fees  
 33 and costs if the manufacturer fails to rebut the  
 34 presumption established in paragraph (1) of subdivision  
 35 (e) of Section 1793.2 and either (1) the manufacturer  
 36 does not maintain a qualified third party dispute  
 37 resolution process which complies with subdivision (e) of  
 38 Section 1793.2, or (2) the manufacturer's qualified third  
 39 party dispute resolution process willfully fails to comply  
 40 with subdivision (e) of Section 1793.2 in the buyer's case.



1 SEC. 5. Section 7102 of the Revenue and Taxation  
2 Code is amended to read:

3 7102. The money in the fund shall, upon order of the  
4 Controller, be drawn therefrom for refunds under this  
5 part, and pursuant to Section 1793.25 of the Civil Code, or  
6 be transferred in the following manner:

7 (a) (1) All revenues, less refunds, derived under this  
8 part at the 4¾ percent rate, including the imposition of  
9 sales and use taxes with respect to the sale, storage, use,  
10 or other consumption of motor vehicle fuel which would  
11 not have been received if the sales and use tax rate had  
12 been 5 percent and if motor vehicle fuel, as defined for  
13 purposes of the Motor Vehicle Fuel License Tax Law  
14 (Part 2 (commencing with Section 7301)), had been  
15 exempt from sales and use taxes, shall be estimated by the  
16 State Board of Equalization, with the concurrence of the  
17 Department of Finance shall be transferred during each  
18 fiscal year to the Transportation Planning and  
19 Development Account in the State Transportation Fund  
20 for appropriation pursuant to Section 99312 of the Public  
21 Utilities Code.

22 (2) If the amount transferred pursuant to paragraph  
23 (1) is less than one hundred ten million dollars  
24 (\$110,000,000) in any fiscal year, an additional amount  
25 equal to the difference between one hundred ten million  
26 dollars (\$110,000,000) and the amount so transferred shall  
27 be transferred, to the extent funds are available, as  
28 follows:

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

31 (B) For the 1987-88 and each subsequent fiscal year,  
32 from the state revenues due to the imposition of sales and  
33 use taxes on fuel, as defined for purposes of the Use Fuel  
34 Tax Law (Part 3 (commencing with Section 8601)).

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

37 (c) The estimate required by subdivision (a) shall be  
38 based on taxable transactions occurring during a calendar  
39 year, and the transfers required by subdivision (a) shall  
40 be made during the fiscal year that commences during

1 that same calendar year. Transfers required by  
2 paragraphs (1) and (2) of subdivision (a) shall be made  
3 quarterly.

4 SEC. 6. Section 3050 of the Vehicle Code is amended  
5 to read:

6 3050. The board shall do all of the following:

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

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

20 (c) Consider any matter concerning the activities or  
21 practices of any person applying for or holding a license  
22 as a new motor vehicle dealer, manufacturer,  
23 manufacturer branch, distributor, distributor branch, or  
24 representative pursuant to Chapter 4 (commencing with  
25 Section 11700) of Division 5 submitted by any person. A  
26 member of the board who is a new motor vehicle dealer  
27 may not participate in, hear, comment, advise other  
28 members upon, or decide any matter considered by the  
29 board pursuant to this subdivision that involves a dispute  
30 between a franchisee and franchisor. After such  
31 consideration, the board may do any one or any  
32 combination of the following:

33 (1) Direct the department to conduct investigation of  
34 matters that the board deems reasonable, and make a  
35 written report on the results of the investigation to the  
36 board within the time specified by the board.

37 (2) Undertake to mediate, arbitrate, or otherwise  
38 resolve any honest difference of opinion or viewpoint  
39 existing between any member of the public and any new  
40 motor vehicle dealer, manufacturer, manufacturer





- 1 branch, distributor branch, or representative.
- 2 (3) Order the department to exercise any and all
- 3 authority or power that the department may have with
- 4 respect to the issuance, renewal, refusal to renew,
- 5 suspension, or revocation of the license of any new motor
- 6 vehicle dealer, manufacturer, manufacturer branch,
- 7 distributor, distributor branch, or representative as such
- 8 license is required under Chapter 4 (commencing with
- 9 Section 11700) of Division 5.
- 10 (d) Hear and consider, within the limitations and in
- 11 accordance with the procedure provided, a protest
- 12 presented by a franchisee pursuant to Section 3060, 3062,
- 13 3064, or 3065. A member of the board who is a new motor
- 14 vehicle dealer may not participate in, hear, comment,
- 15 advise other members upon, or decide, any matter
- 16 involving a protest filed pursuant to Article 4
- 17 (commencing with Section 3060).

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AMENDED IN SENATE AUGUST 17, 1987  
AMENDED IN ASSEMBLY JUNE 11, 1987  
AMENDED IN ASSEMBLY MAY 13, 1987  
AMENDED IN ASSEMBLY APRIL 28, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2057**

Introduced by Assembly Member Tanner

March 6, 1987

An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties

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on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. The bill would, on July 1, 1988, revise the definitions of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a ~~lesser~~ lessee to a manufacturer for a nonconformity, as defined, except as specified. The bill would also make related changes.

The bill would, on July 1, 1988, create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.

This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also require the award of civil penalties, as specified, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

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

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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
6 DISPUTE RESOLUTION PROCESSES  
7

8 9889.70. Unless the context requires otherwise, the  
9 following definitions govern the construction of this  
10 chapter:

11 (a) "Bureau" means the Bureau of Automotive  
12 Repair.

13 (b) "New motor vehicle" means a new motor vehicle  
14 as defined in subparagraph (B) of paragraph (4) of  
15 subdivision (e) of Section 1793.2 of the Civil Code.

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

21 (d) "Qualified third party dispute resolution process"  
22 means a third party dispute resolution process which  
23 operates in compliance with paragraph (3) of subdivision  
24 (e) of Section 1793.2 of the Civil Code and this chapter  
25 and which has been certified by the bureau pursuant to  
26 this chapter.

27 9889.71. The bureau shall establish a program for  
28 certifying each third party dispute resolution process  
29 used for the arbitration of disputes pursuant to paragraph  
30 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
31 In establishing the program, the bureau shall do all of the  
32 following:

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

35 (b) Establish a set of minimum standards which shall  
36 be used to determine whether a third party dispute  
37 resolution process is in compliance with paragraph (3) of  
38 subdivision (e) of Section 1793.2 of the Civil Code and



1 this chapter.  
 2 (c) Prescribe the information which each  
 3 manufacturer, or other entity, that uses a third party  
 4 dispute resolution process, and that applies to have that  
 5 process certified by the bureau, shall provide the bureau  
 6 in the application for certification. In prescribing the  
 7 information to accompany the application for  
 8 certification, the bureau shall require the manufacturer,  
 9 or other entity, to provide only that information which  
 10 the bureau finds is reasonably necessary to enable the  
 11 bureau to determine whether the third party dispute  
 12 resolution process is in compliance with paragraph (3)  
 13 subdivision (e) of Section 1793.2 of the Civil Code and  
 14 this chapter.  
 15 (d) Prescribe the information that each qualified third  
 16 party dispute resolution process shall provide the bureau,  
 17 and the time intervals at which the information shall be  
 18 required, to enable the bureau to determine whether the  
 19 qualified third party dispute resolution process continues  
 20 to operate in compliance with paragraph (3) of  
 21 subdivision (e) of Section 1793.2 of the Civil Code and  
 22 this chapter.  
 23 9889.72. (a) Each manufacturer may establish, or  
 24 otherwise make available to buyers or lessees of new  
 25 motor vehicles, a qualified third party dispute resolution  
 26 process for the resolution of disputes pursuant to  
 27 paragraph (2) of subdivision (e) of Section 1793.2 of the  
 28 Civil Code. The manufacturer, or other entity, which  
 29 operates the third party dispute resolution process shall  
 30 apply to the bureau for certification of that process. The  
 31 application for certification shall be accompanied by the  
 32 information prescribed by the bureau.  
 33 (b) The bureau shall review the application and  
 34 accompanying information and, after conducting an  
 35 onsite inspection, shall determine whether the third  
 36 party dispute resolution process is in compliance with  
 37 paragraph (3) of subdivision (e) of Section 1793.2 of the  
 38 Civil Code and this chapter. If the bureau determines  
 39 that the process is in compliance, the bureau shall certify  
 40 the process. If the bureau determines that the process is

1 not in compliance, the bureau shall deny certification and  
 2 shall state, in writing, the reasons for denial and the  
 3 modifications in the operation of the process that are  
 4 required in order for the process to be certified.  
 5 (c) The bureau shall make a final determination  
 6 whether to certify a third party dispute resolution process  
 7 or to deny certification not later than 90 calendar days  
 8 following the date the bureau accepts the application for  
 9 certification as complete.  
 10 9889.73. (a) The bureau, in accordance with the time  
 11 intervals prescribed pursuant to subdivision (d) of  
 12 Section 9889.71, but at least once annually, shall review  
 13 the operation and performance of each qualified third  
 14 party dispute resolution process and determine, using the  
 15 information provided the bureau as prescribed pursuant  
 16 to subdivision (d) of Section 9889.71 and the monitoring  
 17 and inspection information described in subdivision (c)  
 18 of Section 9889.74, whether the process is operating in  
 19 compliance with paragraph (3) of subdivision (e) of  
 20 Section 1793.2 of the Civil Code and this chapter. If the  
 21 bureau determines that the process is in compliance, the  
 22 certification shall remain in effect.  
 23 (b) If the bureau determines that the process is not in  
 24 compliance with paragraph (3) of subdivision (e) of  
 25 Section 1793.2 of the Civil Code or this chapter, the  
 26 bureau shall issue a notice of decertification to the  
 27 manufacturer, or other entity, which uses that process.  
 28 The notice of decertification shall state the reasons for the  
 29 issuance of the notice and prescribe the modifications in  
 30 the operation of the process that are required in order for  
 31 the process to retain its certification.  
 32 (c) A notice of decertification shall take effect 180  
 33 calendar days following the date the notice is served on  
 34 the manufacturer, or other entity, which uses the process  
 35 that the bureau has determined is not in compliance with  
 36 paragraph (3) of subdivision (e) of Section 1793.2 of the  
 37 Civil Code or this chapter. The bureau shall withdraw the  
 38 notice of decertification prior to its effective date if the  
 39 bureau determines, after a public hearing, that the  
 40 manufacturer, or other entity, which uses the process has



1 made the modifications in the operation of the process  
2 required in the notice of decertification and is in  
3 compliance with paragraph (3) of subdivision (e) of  
4 Section 1793.2 of the Civil Code and this chapter.

5 9889.74. In addition to any other requirements of this  
6 chapter, the bureau shall do all of the following:

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

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

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

21 (1) Onsite inspections of each certified process not less  
22 frequently than twice annually.

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

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

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

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

1 (f) Adopt regulations as necessary and appropriate to  
2 implement the provisions of this chapter.

3 9889.75. The New Motor Vehicle Board in the  
4 Department of Motor Vehicles shall, in accordance with  
5 the procedures prescribed in this section, administer the  
6 collection of fees for the purposes of fully funding the  
7 administration of this chapter.

8 (a) There is hereby created in the Automotive Repair  
9 Fund a Certification Account. Fees collected pursuant to  
10 this section shall be deposited in the Certification  
11 Account and shall be available, upon appropriation by the  
12 Legislature, exclusively to pay the expenses incurred by  
13 the bureau in administering this chapter. If at the  
14 conclusion of any fiscal year the amount of fees collected  
15 exceeds the amount of expenditures for that purpose  
16 during that fiscal year, the surplus in the Certification  
17 Account shall be carried over into the succeeding fiscal  
18 year.

19 (b) Beginning July 1, 1988, every applicant for a  
20 license as a manufacturer, manufacturer branch,  
21 distributor, or distributor branch, and every applicant for  
22 the renewal of a license as a manufacturer, manufacturer  
23 branch, distributor, or distributor branch, shall  
24 accompany the application with a statement of the  
25 number of motor vehicles sold, leased, or otherwise  
26 distributed by or for the applicant in this state during the  
27 preceding calendar year, together with a breakdown by  
28 make, model, and model year and any other information  
29 that the New Motor Vehicle Board may require, and shall  
30 pay to the Department of Motor Vehicles, for each  
31 issuance or renewal of the license, an amount prescribed  
32 by the New Motor Vehicle Board, but not to exceed one  
33 dollar (\$1) for each motor vehicle sold, leased, or  
34 distributed by or for the applicant in this state during the  
35 preceding calendar year. The total fee paid by each  
36 licensee shall be rounded to the nearest dollar in the  
37 manner described in Section 9559 of the Vehicle Code.  
38 No more than one dollar (\$1) shall be charged, collected,  
39 or received from any one or more licensees pursuant to  
40 this subdivision with respect to the same motor vehicle.



1 (c) On or before January 1 of each calendar year, the  
 2 bureau shall determine the dollar amount, not to exceed  
 3 one dollar (\$1) per motor vehicle, which shall be  
 4 collected and received by the Department of Motor  
 5 Vehicles beginning July 1 of that year, based upon an  
 6 estimate of the number of sales, leases, and other  
 7 dispositions of motor vehicles in this state during the  
 8 preceding calendar year, in order to fully fund the  
 9 program established by this chapter during the following  
 10 fiscal year. The bureau shall notify the New Motor  
 11 Vehicle Board of the dollar amount per motor vehicle  
 12 that the New Motor Vehicle Board shall use in calculating  
 13 the amounts of the fees to be collected from applicants  
 14 pursuant to this subdivision.

15 (d) For the purposes of this section, "motor vehicle"  
 16 means a new passenger or commercial motor vehicle of  
 17 a kind that is required to be registered under the Vehicle  
 18 Code, but the term does not include a motorcycle, a  
 19 motor home, or any vehicle whose gross weight exceeds  
 20 10,000 pounds.

21 (e) The New Motor Vehicle Board may adopt  
 22 regulations to implement this section.

23 9889.76. This chapter shall become operative on July  
 24 1, 1988.

25 SEC. 2. Section 1793.2 of the Civil Code is amended  
 26 to read:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

39 (2) If a qualified third party dispute resolution process  
 40 exists, and the buyer receives timely notification in

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

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

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

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

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

39 (D) Provides arbitrators who are assigned to decide  
 40 disputes with copies of, and instruction in, the provisions





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

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

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

17 (G) Renders decisions which consider and provide the  
 18 rights and remedies conferred in regulations of the  
 19 Federal Trade Commission contained in Part 703 of Title  
 20 16 of the Code of Federal Regulations as those regulations  
 21 read on January 1, 1987, Division 2 (commencing with  
 22 Section 2101) of the Commercial Code, and this chapter.

23 Nothing in this chapter requires that, to be certified as a  
 24 qualified third party dispute resolution process pursuant  
 25 to this section, decisions of the process must consider or  
 26 provide remedies in the form of awards of punitive  
 27 damages or multiple damages, under subdivision (c) of  
 28 Section 1794, or of attorney's fees under subdivision (d)  
 29 of Section 1794, or of consequential damages other than  
 30 as provided in subdivisions (a) and (b) of Section 1794,  
 31 including, but not limited to, reasonable repair, towing  
 32 and rental car costs actually incurred by the buyer.

33 (H) Requires that no arbitrator deciding a dispute  
 34 may be a party to the dispute, or an employee, agent, or  
 35 dealer for the manufacturer; and that no other person,  
 36 including an employee, agent, or dealer for the  
 37 manufacturer, may be allowed to participate in formal or  
 38 informal discussions with the arbitrator unless the buyer  
 39 is allowed to participate equally.

40 (I) Requires that in the case of an order for one further

1 repair attempt, a hearing date shall be established no  
 2 later than 30 days after the repair attempt has been made,  
 3 to determine whether the manufacturer has corrected  
 4 the nonconformity. The buyer and the manufacturer  
 5 shall schedule an opportunity for the manufacturer to  
 6 effect the ordered repair no later than 30 days after the  
 7 order for the repair is served on the manufacturer and  
 8 the buyer. If, at the hearing, it is determined that the  
 9 manufacturer did not correct the nonconformity, the  
 10 manufacturer shall be ordered to either replace the  
 11 motor vehicle, if the buyer consents to this remedy, or to  
 12 make restitution.

13 (J) Obtains and maintains certification by the Bureau  
 14 of Automotive Repair pursuant to Chapter 20.5  
 15 (commencing with Section 9889.70) of Division 3 of the  
 16 Business and Professions Code.

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

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

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

35 (5) No person shall sell or lease a motor vehicle  
 36 transferred by a buyer or lessee to a manufacturer as the  
 37 result of a nonconformity unless the nature of the  
 38 nonconformity experienced by the original buyer or  
 39 lessee is clearly and conspicuously disclosed, the  
 40 nonconformity is corrected, and the manufacturer



1 warrants to the new buyer or lessee in writing for a  
2 period of one year that the motor vehicle is free of that  
3 nonconformity.

4 SEC. 3. Section 1793.25 is added to the Civil Code, to  
5 read:

6 1793.25. (a) Notwithstanding Part 1 (commencing  
7 with Section 6001) of Division 2 of the Revenue and  
8 Taxation Code, the State Board of Equalization shall  
9 reimburse the manufacturer of a new motor vehicle for  
10 an amount equal to the sales tax which the manufacturer  
11 includes in making restitution to the buyer pursuant to  
12 subparagraph (B) of paragraph (2) of subdivision (d) of  
13 Section 1793.2, when satisfactory proof is provided that  
14 the retailer of the motor vehicle for which the  
15 manufacturer is making restitution has reported and paid  
16 the sales tax on the gross receipts from the sale of that  
17 motor vehicle. The State Board of Equalization may  
18 adopt rules and regulations to carry out, facilitate  
19 compliance with, or prevent circumvention or evasion of,  
20 this section.

21 (b) Nothing in this section shall in any way change the  
22 application of the sales and use tax to the gross receipts  
23 and the sales price from the sale, and the storage, use, or  
24 other consumption, in this state or tangible personal  
25 property pursuant to Part 1 (commencing with Section  
26 6001) of Division 2 of the Revenue and Taxation Code.

27 (c) The manufacturer's claim for reimbursement and  
28 the board's approval or denial of the claim shall be subject  
29 to the provisions of Article 1 (commencing with Section  
30 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue  
31 and Taxation Code, except Sections 6902.1, 6903, 6907,  
32 and 6908 thereof, insofar as those provisions are not  
33 inconsistent with this section.

34 SEC. 4. Section 1794 of the Civil Code is amended to  
35 read:

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

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

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

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

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

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

27 ~~(e) In addition to the recovery of actual damages, the~~  
28 ~~buyer shall recover a civil penalty of two times the~~  
29 ~~amount of actual damages and reasonable attorney's fees~~  
30 ~~and costs if the manufacturer fails to rebut the~~  
31 ~~presumption established in paragraph (1) of subdivision~~  
32 ~~(e) of Section 1793.2 and either (1) the manufacturer~~  
33 ~~does not maintain a qualified third party dispute~~  
34 ~~resolution process which complies with subdivision (e) of~~  
35 ~~Section 1793.2, or (2) the manufacturer's qualified third~~  
36 ~~party dispute resolution process willfully fails to comply~~  
37 ~~with subdivision (e) of Section 1793.2 in the buyer's case.~~

38 (e) (1) Except as otherwise provided in this  
39 subdivision, if the buyer establishes a violation of  
40 paragraph (2) of subdivision (d) of Section 1793.2, the



1 buyer shall recover damages, reasonable attorney's fees  
2 and costs, and a civil penalty of up to two times the  
3 amount of damages.

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

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

17 (4) If the buyer serves the notice described in  
18 paragraph (3) and the manufacturer complies with  
19 paragraph (2) of subdivision (d) of Section 1793.2 within  
20 30 days of the service of that notice, the manufacturer  
21 shall not be liable for a civil penalty pursuant to this  
22 subdivision.

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

26 SEC. 5. Section 7102 of the Revenue and Taxation  
27 Code is amended to read:

28 7102. The money in the fund shall, upon order of the  
29 Controller, be drawn therefrom for refunds under this  
30 part, and pursuant to Section 1793.25 of the Civil Code, or  
31 be transferred in the following manner:

32 (a) (1) All revenues, less refunds, derived under this  
33 part at the  $4\frac{3}{4}$  percent rate, including the imposition of  
34 sales and use taxes with respect to the sale, storage, use,  
35 or other consumption of motor vehicle fuel which would  
36 not have been received if the sales and use tax rate had  
37 been 5 percent and if motor vehicle fuel, as defined for  
38 purposes of the Motor Vehicle Fuel License Tax Law  
39 (Part 2 (commencing with Section 7301)), had been  
40 exempt from sales and use taxes, shall be estimated by the

1 State Board of Equalization, with the concurrence of the  
2 Department of Finance shall be transferred during each  
3 fiscal year to the Transportation Planning and  
4 Development Account in the State Transportation Fund  
5 for appropriation pursuant to Section 99312 of the Public  
6 Utilities Code.

7 (2) If the amount transferred pursuant to paragraph  
8 (1) is less than one hundred ten million dollars  
9 (\$110,000,000) in any fiscal year, an additional amount  
10 equal to the difference between one hundred ten million  
11 dollars (\$110,000,000) and the amount so transferred shall  
12 be transferred, to the extent funds are available, as  
13 follows:

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

16 (B) For the 1987-88 and each subsequent fiscal year,  
17 from the state revenues due to the imposition of sales and  
18 use taxes on fuel, as defined for purposes of the Use Fuel  
19 Tax Law (Part 3 (commencing with Section 8601)).

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

22 (c) The estimate required by subdivision (a) shall be  
23 based on taxable transactions occurring during a calendar  
24 year, and the transfers required by subdivision (a) shall  
25 be made during the fiscal year that commences during  
26 that same calendar year. Transfers required by  
27 paragraphs (1) and (2) of subdivision (a) shall be made  
28 quarterly.

29 SEC. 6. Section 3050 of the Vehicle Code is amended  
30 to read:

31 3050. The board shall do all of the following:

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

37 (b) Hear and consider, within the limitations and in  
38 accordance with the procedure provided, an appeal  
39 presented by an applicant for, or holder of, a license as a  
40 new motor vehicle dealer, manufacturer, manufacturer



1 branch, distributor, distributor branch, or representative  
2 when the applicant or licensee submits an appeal  
3 provided for in this chapter from a decision arising out of  
4 the department.

5 (c) Consider any matter concerning the activities or  
6 practices of any person applying for or holding a license  
7 as a new motor vehicle dealer, manufacturer,  
8 manufacturer branch, distributor, distributor branch, or  
9 representative pursuant to Chapter 4 (commencing with  
10 Section 11700) of Division 5 submitted by any person. A  
11 member of the board who is a new motor vehicle dealer  
12 may not participate in, hear, comment, advise other  
13 members upon, or decide any matter considered by the  
14 board pursuant to this subdivision that involves a dispute  
15 between a franchisee and franchisor. After such  
16 consideration, the board may do any one or any  
17 combination of the following:

18 (1) Direct the department to conduct investigation of  
19 matters that the board deems reasonable, and make a  
20 written report on the results of the investigation to the  
21 board within the time specified by the board.

22 (2) Undertake to mediate, arbitrate, or otherwise  
23 resolve any honest difference of opinion or viewpoint  
24 existing between any member of the public and any new  
25 motor vehicle dealer, manufacturer, manufacturer  
26 branch, distributor branch, or representative.

27 (3) Order the department to exercise any and all  
28 authority or power that the department may have with  
29 respect to the issuance, renewal, refusal to renew,  
30 suspension, or revocation of the license of any new motor  
31 vehicle dealer, manufacturer, manufacturer branch,  
32 distributor, distributor branch, or representative as such  
33 license is required under Chapter 4 (commencing with  
34 Section 11700) of Division 5.

35 (d) Hear and consider, within the limitations and in  
36 accordance with the procedure provided, a protest  
37 presented by a franchisee pursuant to Section 3060, 3062,  
38 3064, or 3065. A member of the board who is a new motor  
39 vehicle dealer may not participate in, hear, comment,  
40 advise other members upon, or decide, any matter

1 involving a protest filed pursuant to Article 4  
2 (commencing with Section 3060).



AMENDED IN SENATE AUGUST 25, 1987  
AMENDED IN SENATE AUGUST 17, 1987  
AMENDED IN ASSEMBLY JUNE 11, 1987  
AMENDED IN ASSEMBLY MAY 13, 1987  
AMENDED IN ASSEMBLY APRIL 28, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2057**

Introduced by Assembly Member Tanner

March 6, 1987

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An act to add Chapter 20.5 (commencing with Section 9889.70) to Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794 of, and to add Section 1793.25 to, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Section 3050 of the Vehicle Code, relating to warranties, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, Tanner. Warranties: new motor vehicles.

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice



that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. The bill would, on July 1, 1988, revise the definitions of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lessee to a manufacturer for a nonconformity, as defined, except as specified. The bill would also make related changes.

The bill would, on July 1, 1988, create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.

This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also ~~require~~ *authorize* the award of civil penalties, as specified, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

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

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

1 SECTION 1. Chapter 20.5 (commencing with Section  
2 9889.70) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY  
6 DISPUTE RESOLUTION PROCESSES

7  
8 9889.70. Unless the context requires otherwise, the  
9 following definitions govern the construction of this  
10 chapter:

11 (a) "Bureau" means the Bureau of Automotive  
12 Repair.

13 (b) "New motor vehicle" means a new motor vehicle  
14 as defined in subparagraph (B) of paragraph (4) of  
15 subdivision (e) of Section 1793.2 of the Civil Code.

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

21 (d) "Qualified third party dispute resolution process"  
22 means a third party dispute resolution process which  
23 operates in compliance with paragraph (3) of subdivision  
24 (e) of Section 1793.2 of the Civil Code and this chapter  
25 and which has been certified by the bureau pursuant to  
26 this chapter.

27 9889.71. The bureau shall establish a program for  
28 certifying each third party dispute resolution process  
29 used for the arbitration of disputes pursuant to paragraph  
30 (2) of subdivision (e) of Section 1793.2 of the Civil Code.  
31 In establishing the program, the bureau shall do all of the  
32 following:

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

35 (b) Establish a set of minimum standards which shall  
36 be used to determine whether a third party dispute  
37 resolution process is in compliance with paragraph (3) of  
38 subdivision (e) of Section 1793.2 of the Civil Code and



1 this chapter.

2 (c) Prescribe the information which each  
3 manufacturer, or other entity, that uses a third party  
4 dispute resolution process, and that applies to have that  
5 process certified by the bureau, shall provide the bureau  
6 in the application for certification. In prescribing the  
7 information to accompany the application for  
8 certification, the bureau shall require the manufacturer,  
9 or other entity, to provide only that information which  
10 the bureau finds is reasonably necessary to enable the  
11 bureau to determine whether the third party dispute  
12 resolution process is in compliance with paragraph (3) of  
13 subdivision (e) of Section 1793.2 of the Civil Code and  
14 this chapter.

15 (d) Prescribe the information that each qualified third  
16 party dispute resolution process shall provide the bureau,  
17 and the time intervals at which the information shall be  
18 required, to enable the bureau to determine whether the  
19 qualified third party dispute resolution process continues  
20 to operate in compliance with paragraph (3) of  
21 subdivision (e) of Section 1793.2 of the Civil Code and  
22 this chapter.

23 9889.72. (a) Each manufacturer may establish, or  
24 otherwise make available to buyers or lessees of new  
25 motor vehicles, a qualified third party dispute resolution  
26 process for the resolution of disputes pursuant to  
27 paragraph (2) of subdivision (e) of Section 1793.2 of the  
28 Civil Code. The manufacturer, or other entity, which  
29 operates the third party dispute resolution process shall  
30 apply to the bureau for certification of that process. The  
31 application for certification shall be accompanied by the  
32 information prescribed by the bureau.

33 (b) The bureau shall review the application and  
34 accompanying information and, after conducting an  
35 onsite inspection, shall determine whether the third  
36 party dispute resolution process is in compliance with  
37 paragraph (3) of subdivision (e) of Section 1793.2 of the  
38 Civil Code and this chapter. If the bureau determines  
39 that the process is in compliance, the bureau shall certify  
40 the process. If the bureau determines that the process is

1 not in compliance, the bureau shall deny certification and  
2 shall state, in writing, the reasons for denial and the  
3 modifications in the operation of the process that are  
4 required in order for the process to be certified.

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

10 9889.73. (a) The bureau, in accordance with the time  
11 intervals prescribed pursuant to subdivision (d) of  
12 Section 9889.71, but at least once annually, shall review  
13 the operation and performance of each qualified third  
14 party dispute resolution process and determine, using the  
15 information provided the bureau as prescribed pursuant  
16 to subdivision (d) of Section 9889.71 and the monitoring  
17 and inspection information described in subdivision (c)  
18 of Section 9889.74, whether the process is operating in  
19 compliance with paragraph (3) of subdivision (e) of  
20 Section 1793.2 of the Civil Code and this chapter. If the  
21 bureau determines that the process is in *substantial*  
22 compliance, the certification shall remain in effect.

23 (b) If the bureau determines that the process is not in  
24 *substantial* compliance with paragraph (3) of subdivision  
25 (e) of Section 1793.2 of the Civil Code or this chapter, the  
26 bureau shall issue a notice of decertification to the  
27 manufacturer, or other entity, which uses that process.  
28 The notice of decertification shall state the reasons for the  
29 issuance of the notice and prescribe the modifications in  
30 the operation of the process that are required in order for  
31 the process to retain its certification.

32 (c) A notice of decertification shall take effect 180  
33 calendar days following the date the notice is served on  
34 the manufacturer, or other entity, which uses the process  
35 that the bureau has determined is not in compliance with  
36 paragraph (3) of subdivision (e) of Section 1793.2 of the  
37 Civil Code or this chapter. The bureau shall withdraw the  
38 notice of decertification prior to its effective date if the  
39 bureau determines, after a public hearing, that the  
40 manufacturer, or other entity, which uses the process has



**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **NIEDERMEIER v. FCA US**

Case Number: **S266034**

Lower Court Case Number: **B293960**

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ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 1 of 9
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ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 3 of 9
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 4 of 9
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ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 9 of 9
BRIEF	Opening Brief on the Merits

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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.

6/1/2021

Date

/s/Chris Hsu

Signature

Tobisman, Cynthia (197983)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

Law Firm