

No. S274625

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

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

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

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**EXHIBITS IN SUPPORT OF  
MOTION FOR JUDICIAL NOTICE  
Volume 3 of 6 / Pages 530 to 719 of 1389**

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**E073766**

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

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**EVERARDO RODRIGUEZ et al.,**  
*Plaintiffs and Appellants,*

*v.*

**FCA US, LLC,**  
*Defendant and Respondent.*

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

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**EXHIBITS TO MOTION FOR JUDICIAL NOTICE  
Volume 3 of 5 • Pages 00526 – 00714 of 00923**

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**FCA US, LLC**

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6 **DECLARATION OF JAN S. RAYMOND**  
7

8 I, Jan Raymond declare:

9 I am an attorney licensed to practice by the California State Bar, State Bar number  
10 88703, and admitted to practice in the United States Federal Court for the Eastern  
11 District of California. My business is researching legislative history and interpreting  
12 legislative intent, I have over 15 years experience in legislative research and analysis of  
13 legislative intent.

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

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

18 **In particular:**

19 **Chapter 1333, Statutes of 1970**

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

21 **Chapter 1523, Statutes of 1971**

22 Enacting 1795.5 and amending 1794

23 **Chapter 169, Statutes of 1974**

24 Enacting 1795.5(d)

25 **Chapter 991, Statutes of 1978**

26 Enacting 1791(o)

27 **Chapter 385, Statutes of 1982**

28 Repealing and reenacting 1794

**Chapter 728, Statutes of 1983**

Amending 1795.5

**Chapter 1047, Statutes of 1985**

Amending 1791(o)

**Chapter 1280, Statutes of 1987**

Adding 1793.2(d)(2) and amending 1794

**Chapter 1265, Statutes of 1993**

Amending 1791(o)

(888) 676-1947

**Declaration of Jan Raymond**

**Page 1 of 4**

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

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**MJN/532**

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Chapter 196, Statutes of 1998  
Amending 1791(o).

We report in a series of volumes. This Volume 3 contains discussion and materials regarding the 1987 enactment.

At all times, all persons working on this project operated under instructions to locate all documents available pertinent to the legislative bill or bills which led to this enactment. This research was compiled in the days immediately prior to the date of this declaration, and reflects all the documents, and sources available during that time pertinent to this project.

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

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

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

The following documents accompany this declaration:

**1987 Chapter 1280**

Excerpt regarding Assembly Bill 2057 (Tanner) from the Assembly Final History, 1987-88 Regular Session.

Page 1

AB 2057 as introduced March 6, 1987.

Page 3

Documents regarding AB 2507 as introduced from the bill file of the author, fourteen pages.

Page 13

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**Declaration of Jan Raymond**

Page 2 of 4

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**MJN/533**

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1	DMV analysis of AB 2057 as introduced from the bill file of the Assembly Republican Caucus, three pages.	Page 27
2		
3	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Assembly April 28, 1987.	Page 30
4		
5	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Assembly May 13, 1987.	Page 39
6		
7	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Assembly June 11, 1987.	Page 47
8		
9	Assembly Committee on Governmental Efficiency and Consumer Protections analysis of AB 2057 as amended 6/11/87, from the bill file of the author, two pages.	Page 55
10	Assembly Third Reading analysis of AB 2057 as amended June 11, 1987.	Page 57
11		
12	Senate Committee on Judiciary Background Information Sheet on AB 2057, with associated file documents, thirteen pages. (We include only a brief except of a couple of documents deemed cumulative to provide a sense of what was in the file regarding constitutional objections to the bill)	Page 61
13		
14	Department of Justice bill analysis of AB 2057 and proposed amendments, from the bill file of the author, six pages.	Page 74
15		
16	Senate Committee on Judiciary analysis of AB 2057 as amended June 11, for hearing July 14, 1987.	Page 80
17		
18	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Senate August 17, 1987.	Page 86
19		
20	Senate Committee on Judiciary analysis of AB 2057 as amended August 17, for hearing August 18, 1987.	Page 95
21		
22	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Senate August 25, 1987.	Page 102
23		
24	Excerpt regarding Civil Code Section 1793.2 and 1794 from AB 2057 as amended in the Senate September 4, 1987.	Page 111
25		
26	SFA Third Reading analysis of AB 2057 as amended September 4, 1987.	Page 120
27		
28	Assembly Concurrence in Senate Amendments floor analysis of AB 2057 as amended September 4, 1987.	Page 125

1 Documents regarding AB 2057 as amended 9/4 and undated documents from  
2 the bill file of the author, nine pages. Page 130

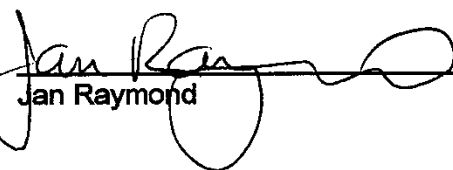
3 Selected document regarding AB 2057 from the enrolled bill file of former  
4 Governor George Deukmajian, twenty-four pages. Page 139

5 Chapter 1280, Statutes of 1987. Page 163

6 Excerpt regarding Chapter 1270 from the Summary Digest for 1987. Page 171  
7 This collection ends with page 172

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

9 Executed at Davis California, April 4, 2000.

10   
11 Jan Raymond

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(888) 676-1947 Declaration of Jan Raymond Page 4 of 4  
For definitions of the legislative terms used in this declaration, visit the California law page at  
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MJN/535

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VOLUME 1  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1987-88 REGULAR SESSION  
1987-88 FIRST EXTRAORDINARY SESSION

# ASSEMBLY FINAL HISTORY

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

Assembly Convened December 1, 1986  
Recessed December 3, 1986      Reconvened January 5, 1987  
Recessed April 9, 1987      Reconvened April 20, 1987  
Recessed July 16, 1987      Reconvened August 17, 1987  
Recessed September 11, 1987      Reconvened January 4, 1988  
Recessed March 24, 1988      Reconvened April 4, 1988  
Recessed June 30, 1988      Reconvened August 1, 1988  
Adjourned September 1, 1988  
Adjourned Sine Die November 30, 1988  
Legislative Days..... 246

HON. WILLIE L. BROWN JR.  
*Speaker*

HON. MIKE ROOS  
*Speaker pro Tempore*

HON. PHILLIP ISENBERG  
*Assistant Speaker pro Tempore*

HON. THOMAS HANNIGAN  
*Majority Floor Leader*

HON. PAT NOLAN  
*Minority Floor Leader*

Compiled Under the Direction of  
R. BRIAN KIDNEY  
*Chief Clerk*

GUNVOR ENGLE  
*History Clerk*

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## A.B. No. 2057—Tanner.

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.

1987

- Mar. 6—Introduced. To print.
- Mar. 9—Read first time.
- Mar. 11—From printer. May be heard in committee April 10.
- Mar. 24—Referred to Com. on G.E. & CON.PRO.
- April 21—In committee: Set, first hearing. Hearing canceled at the request of author.
- April 28—From committee chairman, with author's amendments: Amend, and re-refer to Com. on G.E. & CON.PRO. Read second time and amended.
- April 30—Re-referred to Com. on G.E. & CON.PRO.
- May 12—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. (Ayes 6. Noes 1.) (May 5).
- May 13—Read second time and amended.
- May 18—Re-referred to Com. on W. & M.
- June 10—From committee: Amend, and do pass as amended. (Ayes 18. Noes 5.) (June 3).
- June 11—Read second time and amended. Ordered returned to second reading.
- June 15—Read second time. To third reading.
- June 22—Read third time, passed, and to Senate. (Ayes 54. Noes 20. Page 2929.)
- June 22—In Senate. Read first time. To Com. on RLS. for assignment.
- July 1—Referred to Com. on JUD.
- July 15—In committee: Hearing postponed by committee.
- July 16—Joint Rule 61 suspended.
- Aug. 17—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. 24—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.)
- Aug. 25—Read second time, amended, and re-referred to Com. on APPR.
- Aug. 28—Joint Rule 61 suspended.
- Sept. 3—From committee: Amend, and do pass as amended. (Ayes 9. Noes 0.)
- Sept. 4—Read second time, amended, and to third reading.
- Sept. 8—Read third time, passed, and to Assembly. (Ayes 39. Noes 0. Page 3674.)
- Sept. 9—In Assembly. Concurrence in Senate amendments pending.
- Sept. 10—Senate amendments concurred in. To enrollment. (Ayes 56. Noes 22. Page 4859.)
- Sept. 16—Enrolled and to the Governor at 12 m.
- Sept. 28—Approved by the Governor.
- Sept. 28—Chaptered by Secretary of State - Chapter 1280, Statutes of 1987.

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ASSEMBLY BILL

No. 2057

Introduced by Assembly Member Tanner

March 6, 1987

An act to add Chapter 20.5 (commencing with Section 1789.70) 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 money 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:  $\frac{3}{4}$ . 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

distributor branch required to be licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which meets the criteria set forth in paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

(b) Establish a set for minimum standards which shall be used to determine whether a third party dispute resolution process is in compliance with the criteria set forth in paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code.

(c) Prescribe the information which each manufacturer, or other entity, that uses a third party dispute resolution process, and which seeks to have that process certified by the bureau, shall provide the bureau in the application for certification. In prescribing the information to accompany the application for certification, the bureau shall require the manufacturer, or other entity, to provide only that information which the bureau finds is reasonably necessary to enable the bureau to determine whether the third party dispute resolution process is in compliance with the criteria set forth in paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code.

(d) Prescribe the information that each qualified third party dispute resolution process shall provide the bureau, and the time intervals at which the information shall be required, to enable the bureau to determine whether the qualified third party dispute resolution process continues

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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  
5 otherwise make available to buyers or lessees of  
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. An  
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 to  
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 (e)  
40 of Section 9889.74, whether the process is operating in

compliance with the criteria set forth in paragraph (3) of  
subdivision (e) of Section 1793.2 of the Civil Code. If the  
bureau determines that the process is in compliance with  
those criteria, the certification shall remain in effect.

(b) If the bureau determines that the process is not in  
compliance with one or more of the criteria set forth in  
paragraph (3) of subdivision (e) of Section 1793.2 of the  
Civil Code, the bureau shall issue a notice of  
decertification to the manufacturer, or other entity,  
which uses that process. The notice of decertification  
shall state the reasons for the issuance of the notice,  
enumerate the criteria set forth in paragraph (3) of  
subdivision (e) of Section 1793.2 of the Civil Code with  
which the process is not in compliance, and prescribe the  
modifications in the operation of the process that are  
required in order for the process to retain its certification.

(c) A notice of decertification shall take effect 180  
calendar days following the date the notice is served on  
the manufacturer, or other entity, which uses the process  
that the bureau has determined is not in compliance with  
one or more of the criteria set forth in paragraph (3) of  
subdivision (e) of Section 1793.2 of the Civil Code. The  
bureau shall withdraw the notice of decertification prior  
to its effective date if the bureau determines, after a  
public hearing, that the manufacturer, or other entity  
which uses the process has made the modifications in the  
operation of the process required in the notice of  
decertification and is in compliance with the criteria set  
forth in paragraph (3) of subdivision (e) of Section 1793.2  
of the Civil Code.

9889.74. In addition to any other requirements of this  
chapter, the bureau shall do all of the following:

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

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

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

(1) Onsite inspections of each certified process not more frequently than twice annually.

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

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

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

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

(f) Adopt regulations as necessary and appropriate to implement the provisions of this chapter.

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) There is hereby created in the Automotive Repair Fund a Certification Account. Fees collected pursuant to this section shall be deposited in the Certification Account and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose

during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, every applicant for a license as a manufacturer, manufacturer branch, distributor, or distributor branch, and every applicant for the renewal of a license as a manufacturer, manufacturer branch, distributor, or distributor branch, shall accompany the application with a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the applicant in this state during the preceding calendar year, together with a breakdown by make, model, and model year and any other information that the New Motor Vehicle Board may require, and shall pay to the Department of Motor Vehicles, for each issuance or renewal of the license, an amount prescribed by the New Motor Vehicle Board, but not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the applicant in this state during the preceding calendar year. The total fee paid by each licensee shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more licensees pursuant to this subdivision with respect to the same motor vehicle.

(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle"

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1 means a new passenger or commercial motor vehicle  
2 a kind that is required to be registered under the Vehicle  
3 Code, but the term does not include a motorcycle,  
4 motor home, or any vehicle whose gross weight exceeds  
5 10,000 pounds.

6 (e) The New Motor Vehicle Board may make  
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 warranty;  
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  
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  
22 permitted to may enter into warranty service contracts  
23 with independent service and repair facilities. If  
24 warranty service contracts may provide for a fixed  
25 schedule of rates to be charged for warranty service  
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  
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  
37 cover a period of time in excess of one year, and may be  
38 renewed only by a separate, new contract or letter  
39 agreement, between the manufacturer and the  
40 independent service and repair facility.

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

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

(b) Where 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 shall be serviced or repaired so as to conform to the  
applicable warranties within 30 days. Delay caused by  
conditions beyond the control of the manufacturer or his  
representatives shall serve to extend this 30-day  
requirement. Where 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 The buyer shall  
deliver nonconforming goods to the manufacturer's  
service and repair facility within this state, unless, due to  
reasons of size and weight, or method of attachment,  
method of installation, or nature of the nonconformity,  
such delivery cannot reasonably be accomplished.  
Should the buyer be unable to effect return of If the  
buyer cannot return the nonconforming goods for any of  
the above these reasons, he or she shall notify the  
manufacturer or its nearest service and repair facility  
within the state. Written notice of nonconformity to the  
manufacturer or its service and repair facility shall  
constitute return of the goods for purposes of this section.  
Upon receipt of 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

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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  
8 if the manufacturer or its representative in this state  
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 the  
14 amount directly attributable to use by the buyer prior to  
15 the discovery of the nonconformity.

16 (2) If the manufacturer or its representative in the  
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 replacement, plus any incidental damages  
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  
 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  
 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  
 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  
 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

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1 Commercial Code, and this chapter.

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

8 (F) The process renders decisions which consider  
9 provide the rights and remedies conferred in regulation  
10 of the Federal Trade Commission contained in Part  
11 of Title 16 of the Code of Federal Regulations as the  
12 regulations read on January 1, 1987, Division  
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  
17 the process must consider or provide remedies in  
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  
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  
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 motor  
34 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"  
39 other motor vehicle sold with a manufacturer's new  
40 warranty but does not include motorcycles, 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:

(a) (1) All revenues, less refunds, derived under part at the 4 $\frac{3}{4}$  percent rate, including the imposition of sales and use taxes with respect to the sale, storage or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) If the amount transferred pursuant to paragraph (1) is less than one hundred ten million dollars (\$110,000,000) in any fiscal year, an additional amount equal to the difference between one hundred ten million dollars (\$110,000,000) and the amount so transferred shall be transferred, to the extent funds are available, as follows:

(A) For the 1986-87 fiscal year, from the General Fund.

(B) For the 1987-88 and each subsequent fiscal year from the state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)).

(b) The balance shall be transferred to the General Fund.

(c) The estimate required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivision (a) shall be made quarterly.

SEC. 5. Section 3050 of the Vehicle Code is amended to read:

3050. The board shall do all of the following:

(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing such matters as are specifically committed to its jurisdiction.

(b) Hear and consider, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) 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 pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After such consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to *mediate*, arbitrate *amicably* or, *otherwise* resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor

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1 vehicle dealer, manufacturer, manufacturer branch,  
2 distributor, distributor branch, or representative as  
3 license is required under Chapter 4 (commencing  
4 Section 11700) of Division 5.  
5 (d) Hear and consider, within the limitations and  
6 accordance with the procedure provided, a protest  
7 presented by a franchisee pursuant to Section 3060,  
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  
12 (commencing with Section 3060).

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23 February 1987

The Honorable Sally Tanner  
California State Assembly  
State Capitol  
Sacramento, CA 95814

Dear Assemblywoman Tanner:

Enclosed is a copy of the proposed draft for a "Lemon Law II" bill. As you know, we started a working group in December which includes CALPIRG, the Attorney General's office, Consumers Union, the New Motor Vehicle Board, the Department of Consumer Affairs, Jay DeFuria, and Lemon Law attorneys Donna Selnick, Roger Dickinson, Paul Kiesel and Brian Kemnitzer.

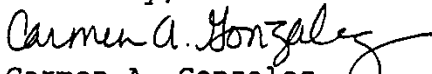
After several meetings in which the full group discussed possible strategies, a smaller group consisting of CALPIRG, the Attorney General's office, and Donna Selnick, drafted this final version. Consumers Union worked closely with the small group on strategy decisions.

We consider this draft to be a workable solution given the highly complex nature of the Lemon Law problem. After consulting with people across the nation who have struggled with these same issues, we believe that the proposed draft represents a reasonable improvement to the law. It was written with an eye towards what can practically be achieved, and therefore does not constitute a "wish list." Please be assured that a tremendous amount of time and effort went into its development.

We appreciate your continued dedication to this issue as well as your patience in working with us. I will be contacting you in the next few days to schedule an appointment to further discuss this proposal.

Please do not hesitate to contact me should you have any immediate questions or if we can offer you support in any way.

Sincerely,



Carmen A. Gonzalez  
Consumer Program Director

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

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repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

(b) Where 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 delays arise, 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 or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of 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 in an action 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

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resulting from any delay in giving the notification. The buyer may assert the presumption in paragraph (1) during the third party process. 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~~ do all of the following:

(A) Comply 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 in effect on December 31, 1975 as modified by this section; ~~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.~~

(B) Provide arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of this section, the Federal Trade Commission's requirements described in subparagraph (A), and any explanatory material prepared by the Department of Consumer Affairs.

(C) Provide each buyer who notifies the third party dispute resolution process of the dispute with a copy of the Department of Consumer Affairs publication describing this section.

(D) Provide the buyer and the manufacturer at least 7 days before the dispute resolution hearing with copies of all written material submitted by the other.

(E) Provide the buyer at least 7 days before the dispute resolution hearing with copies of all technical service bulletins prepared by the manufacturer that relate to the disputed nonconformity.

(F) Conduct a hearing at which the buyer and manufacturer may make an oral presentation including a response to the oral and written statements submitted by the other.

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

(H) Render decisions within 60 days from the date the buyer initiated proceedings.

(I) Require the manufacturer to provide an inspection and written report prepared by an independent motor vehicle expert at no cost to the buyer if the arbitrator believes that the inspection and report is necessary to resolve the dispute.

(J) Upon deciding that the manufacturer failed to correct the nonconformity within a reasonable number of attempts, order the manufacturer to repurchase the vehicle as provided in paragraph (5), replace the vehicle if the buyer consents as provided in paragraph (6), or further repair the vehicle as provided in paragraph (7).

(K) Prescribe a reasonable time, not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of the decision.

(L) Prepare within 90 days after the end of a calendar year, and maintain for five years, a compilation for that year of the number of:

(i) Buyers submitting vehicle repurchase requests.

(ii) Buyers submitting vehicle replacement requests.

(iii) Vehicle repurchase requests satisfactorily settled in arbitration.

(iv) Vehicle replacements awarded in arbitration.

(v) Purchase price refunds awarded in arbitration.

(vi) Purchase price awards rendered in compliance with paragraph (5).

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- (vii) Vehicle repurchase awards accepted by the buyer.
- (viii) Vehicle repurchase awards complied with by the manufacturer.
- (ix) Arbitration awards where additional repairs were the most prominent remedy.
- (x) Awards accepted by the buyer.
- (xi) Awards complied with by the manufacturer.
- (xii) Arbitration decisions where the buyer was awarded nothing.
- (xiii) Decisions that were not rendered within 60 days from the date the buyer initiated proceedings.
- (xiv) Decision performances that were not satisfactorily carried out within 30 days from the final decision.

(M) Provide the information described in subparagraph (L) and 16 C.F.R. section 703.6 to the Attorney General, Department of Consumer Affairs, and any district attorney, and any member of the public upon written request.

(4) The manufacturer shall submit all technical service bulletins relating to the disputed nonconformity, and the manufacturer and buyer shall submit all written material on which they will rely at the hearing, to the third party dispute resolution process at least 10 days before the scheduled hearing date.

(5) If the arbitrator orders the manufacturer to repurchase the nonconforming motor vehicle, the manufacturer shall be required to pay an amount equal to the following:

(A) The sum of (i) the amount the buyer actually paid or contracted to pay under a conditional sales contract or loan including the value of any trade-in, all charges added by the dealer, and charges for a service contract or extended warranty, (ii) official fees including sales tax and license and registration fees, and (iii) reasonable expenses incurred in connection with the repair of the vehicle and for towing and rental of a similar vehicle; less

(B) An amount attributable to the buyer's use of the vehicle determined by multiplying the total cash price of the vehicle by a fraction having as its denominator one hundred twenty thousand (\$120,000) and having as its numerator the number of miles the vehicle traveled at the time the buyer first notified the manufacturer, dealer, or authorized repair facility of the nonconformity.

(6) If the arbitrator orders the manufacturer to replace the vehicle and the buyer consents to this remedy, the manufacturer shall replace the vehicle with a substantially similar new motor vehicle equipped with similar accessories, pay sales tax, license, and registration fees imposed on the new motor vehicle, and reimburse the buyer for the expenses described in paragraph 5(A)(iii). The buyer shall only be liable to pay the manufacturer an amount attributable to the buyer's use of the vehicle as determined in paragraph 5(B). If the buyer does not

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consent to this remedy, the arbitrator shall order the manufacturer to repurchase the vehicle.

(7) (A) The arbitrator may order the manufacturer to attempt one further repair of the vehicle if (i) no more than four repair attempts have already been performed, (ii) the nature of the repair work is specifically described in the order, and (iii) the manufacturer, dealer, or authorized repair facility has not already performed the repair procedure described in the order or a substantially similar procedure.

(B) The arbitrator shall establish a hearing date no later than 30 days after the order for repair is served on the manufacturer and the buyer to determine whether the manufacturer has corrected the nonconformity. The buyer and the manufacturer shall schedule an opportunity for the manufacturer to effect the ordered repair before the hearing date.

(C) If the arbitrator determines at the hearing that the manufacturer did not correct the nonconformity, the arbitrator shall order the manufacturer to repurchase the vehicle.

(8) The manufacturer shall inform each buyer in writing made part of or delivered in conjunction with the warranty or owner's manual that a publication describing the requirements and procedures of a qualified third party dispute resolution process is available from the Department of Consumer Affairs.

(49) 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 to the buyer or lessee.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty, but does not include motorcycles, motorhomes, or off-road motor vehicles which are not registered under the Vehicle Code because they are to be operated or used exclusively off the highways. A "demonstrator" is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(f) No person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer as the result of a nonconformity as defined in subdivision (e) unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed, the nonconformity is corrected, and the manufacturer warrants to the new buyer or lessee in writing for a period of one year that the motor vehicle is free of that nonconformity.

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

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

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

(e) In addition to the recovery of actual damages, the buyer shall recover a civil penalty of two times the amount of actual damages and reasonable attorney's fees and costs if the following occur:

(1) (A) The manufacturer does not maintain a qualified third party dispute resolution process which complies with Section 1793.2(e), or

(B) The manufacturer's qualified third party dispute resolution process fails to comply with Section 1793.2(e) in the buyer's case, and

(2) The manufacturer fails to rebut the presumption established in Section 1793.2(e)(1).

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## LEGISLATIVE ANALYSIS

Business, Transportation and Planning Agency

Department of Motor Vehicles

TAMM

AL 1987

SUBJECT

Warranties: New mot. vehicles

Original

**SUMMARY:** Requires the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes under the "Lemon Law"; Requires each manufacturer, distributor, and their branches to pay an annual fee not exceeding \$1 for each motor vehicle sold, leased or otherwise distributed by or for them to fund the program.

**DETAILED ANALYSIS:** Under the existing "Lemon Law", when a manufacturer is unable to repair or service a new motor vehicle after a reasonable number of attempts, replacement or restitution for the vehicle must be made to the consumer by the manufacturer.

This bill would make several changes to the existing "Lemon Law" replacement or restitution provisions and would require the Bureau of Automotive Repair (BAR) to establish and administer a program for certifying each third party resolution process used for the arbitration of disputes between manufacturers and vehicle purchasers. The program would include establishing standards, application requirements, reporting requirements, certification, decertification, establishing procedures to assist vehicle owners regarding the resolution processes, establishing methods for measuring customer satisfaction and identifying violations, monitoring and inspecting resolution processes and other functions.

This bill would create a Certification Account in the Automotive Repair Fund to exclusively pay BAR's expenses incurred by creating and maintaining the program. The New Motor Vehicle Board (NMVB) is named to administer the collection of fees. The account would be funded by collection of a fee not to exceed \$1 from each licensed manufacturer, manufacturer branch, distributor, or distributor branch for each motor vehicle sold, leased or otherwise distributed by or for them during each calendar year. The fee would be required to be paid in conjunction with the application for licensing or renewal of the license. The application would be accompanied by a report of such vehicles broken down to make, model, and model year and giving any other information the NMVB may require. The amount of the fee to be collected would be determined each year on or before January 1st, based on an estimate of the number of vehicles sold, leased or distributed the year before. It is unclear whether BAR or NMVB would make this determination as the bill implies that each would.

POSITION NEUTRAL

REPRESENTATIVE

AGENCY

Original signed by Allan Goldstein

DATE

April 21, 1987

DATE

APR 23 1987

BY

INV/OL:lm 4-15-87

DAV 22 (REV. 1/87)

GOVERNOR'S OFFICE

POSITION NOTED

POSITION APPROVED

POSITION DISAPPROVED

BY

DATE

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This bill would authorize the DMV to adopt regulations to implement collection of the fee and reports of vehicles on which the fee is based.

**COST ANALYSIS:** The Department of Motor Vehicles would incur implementation costs of \$33,200 to create the program for collection of the fee from affected occupation licensees. It would require an appropriation of that amount during the 87/88 fiscal year. For subsequent years, the annual ongoing cost would be approximately \$6,966. A detailed fiscal impact statement is attached.

**LEGISLATIVE HISTORY:** This bill is sponsored by the author.

This bill will probably be supported by consumer groups who complain that the existing arbitration system does not work well since some arbitrators do not follow Federal Trade Commission guidelines.

Manufacturer and distributor groups will probably oppose the bill because of the time and effort it will take to prepare the reports and compute the fees. They may also object to the sales or use tax reimbursement provisions of this bill. Even though they may be reimbursed by the Board of Equalization for these taxes, this provision would compound the "red tape" in transactions where they would already have spent considerable time, money and effort in dealing with the "lemon" vehicle.

Related legislation: AB 1787, Tanner (CH 388, Stats. 82), established the current "Lemon Law."

AB 3611, Tanner (85/86 RS), contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance or renewal of the occupational license by DMV to fund a certification program. The bill died in the Senate Committee on Appropriations.

AB 2050, Tanner, is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, vehicle; including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.

SB 71, Greene, is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.

SB 228, Greene, is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

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**ANALYSIS FOR:** According to the author's office, there have been many complaints by consumers regarding the arbitration process. Many buyers feel the arbitrators are biased toward manufacturers. Requiring BAR to certify and monitor arbitration processes should lessen these complaints.

**RECOMMENDED POSITION:** The Department of Motor Vehicles recommends a position of **NEUTRAL**.

The department would be virtually unaffected by the provisions of this bill dealing with the arbitration process and the restitution or replacement made by dealers in the event a new vehicle cannot be repaired.

The provisions of this bill requiring the department to collect the additional fee would not adversely impact the department's programs or policies.

Although consumers would no longer pay registration fees on replacement vehicles, the manufacturer would, so there should be no impact to the registration process.

For further information, please contact:

Lynda Miller  
Legislative Liaison Office  
732-7574

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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 1799.70) 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.

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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 an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote:  $\frac{3}{4}$ . 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:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which meets the criteria set forth in operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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

(c) Prescribe the information which each manufacturer, or other entity, that uses a third party dispute resolution process, and which seeks that applies to have that process certified by the bureau, shall provide the bureau in the application for certification.

1 No more than one dollar (\$1) shall be charged, collected,  
 2 or received from any one or more licensees pursuant  
 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 the  
 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  
 20 a kind that is required to be registered under the Vehicle  
 21 Code, but the term does not include a motorcycle,  
 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 warranty,  
 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,  
 39 a 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

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1 of attachment, or method of installation, or nature of  
 2 nonconformity, delivery cannot reasonably  
 3 accomplished. If the buyer cannot return  
 4 nonconforming goods for any of these reasons, he or  
 5 shall notify the manufacturer or its nearest service  
 6 repair facility within the state. Written notice  
 7 nonconformity to the manufacturer or its service  
 8 repair facility shall constitute return of the goods  
 9 purposes of this section. Upon receipt of such notice  
 10 nonconformity the manufacturer shall, at its option,  
 11 service or repair the goods at the buyer's residence,  
 12 pick up the goods for service and repair, or arrange  
 13 transporting the goods to its service and repair facility.  
 14 All reasonable costs of transporting the goods when  
 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 the  
 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  
 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.

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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  
 2 by the buyer shall be determined by multiplying  
 3 actual price of the new motor vehicle paid or payable  
 4 the buyer, including any charges for transportation  
 5 manufacturer-installed options, by a fraction having a  
 6 denominator 120,000 and having as its numerator  
 7 number of miles traveled by the new motor vehicle  
 8 to the time the buyer first delivered the vehicle to  
 9 manufacturer or distributor, or its authorized service  
 10 repair facility for correction of the problem that gave  
 11 to the nonconformity. Nothing in this paragraph shall  
 12 any way limit the rights or remedies available to  
 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  
 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  
 39 the buyer in any civil action, including an action in small  
 40 claims court, or other formal or informal proceeding.

(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 after the decision is  
 accepted by the buyer, 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 if the decision  
 is accepted by the buyer, whichever occurs later.

(3) A qualified third party dispute resolution process  
 shall meet all of the following criteria: shall do all of the  
 following:

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

(B) ~~The process renders~~ Render decisions which are  
 binding on the manufacturer if the buyer elects to accept  
 the decision.

(C) ~~Prescribes~~ Prescribe a reasonable time, not to  
 exceed 30 days after the decision is accepted accepted by

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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 the~~  
 4 ~~individuals who conduct investigations and who make~~  
 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~~  
 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 the~~  
 17 ~~remedy or that restitution be made to the buyer~~  
 18 ~~replace the motor vehicle or make restitution~~  
 19 ~~accordance with paragraph (2) of subdivision (d).~~  
 20 ~~(F) Provide, at the request of the arbitrator or~~  
 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~~  
 33 ~~qualified third party dispute resolution process pursuant~~  
 34 ~~to this section, decisions of the process must consider~~  
 35 ~~provide remedies in the form of awards of punitive~~  
 36 ~~damages or multiple damages, under subdivision (c)~~  
 37 ~~Section 1794, or of attorney's fees under subdivision~~  
 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

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1 includes in making restitution to the buyer pursuant  
2 subparagraph (B) or paragraph (2) of subdivision  
3 Section 1793.2, when satisfactory proof is provided  
4 the retailer of the motor vehicle for which  
5 manufacturer is making restitution has reported and  
6 the sales tax on the gross receipts from the sale of  
7 motor vehicle. The State Board of Equalization  
8 adopt rules and regulations to carry out, facilitate  
9 compliance with, or prevent circumvention or evasion  
10 this section.

11 (b) Nothing in this section shall in any way change  
12 application of the sales and use tax to the gross receipt  
13 and the sales price from the sale, and the storage, use  
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  
18 to 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, 6904,  
22 and 6908 thereof, insofar as those provisions are  
23 inconsistent with this section.

24 SEC. 4. Section 1794 of the Civil Code is amended  
25 to read:

26 1794. (a) Any buyer of consumer goods who  
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  
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  
34 justifiably revoked acceptance of the goods or  
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,  
39 the measure of damages shall include the cost of repair  
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 4% 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

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1 been 5 percent and if motor vehicle fuel, as defined  
 2 purposes of the Motor Vehicle Fuel License Tax  
 3 (Part 2 (commencing with Section 7301)), had been  
 4 exempt from sales and use taxes, shall be estimated by  
 5 State Board of Equalization, with the concurrence of  
 6 Department of Finance shall be transferred during  
 7 fiscal year to the Transportation Planning  
 8 Development Account in the State Transportation  
 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,  
 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  
 39 of Division 3 of Title 2 of the Government Code  
 40 governing such matters as are specifically committed

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

- 1 accordance with the procedure provided, a protest
- 2 presented by a franchisee pursuant to Section 3060,
- 3 3064, or 3065. A member of the board who is a new member
- 4 vehicle dealer may not participate in, hear, comment on,
- 5 advise other members upon, or decide, any protest
- 6 involving a protest filed pursuant to Article 10, Chapter 1000,
- 7 (commencing with Section 3060).

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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 1789.70) 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," "motor vehicle," and "qualified third party dispute resolution process" and define the term "demonstrator" for the 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 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 an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote:  $\frac{3}{4}$ . Appropriation: yes. Fiscal committee: State-mandated local program: no.

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

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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



(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e) The New Motor Vehicle Board may adopt regulations to implement this section.

SEC. 2. 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 this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by 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, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

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

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within the state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the

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1 nonconforming goods for any of these reasons, he or she  
2 shall notify the manufacturer or its nearest service  
3 repair facility within the state. Written notice of  
4 nonconformity to the manufacturer or its service  
5 repair facility shall constitute return of the goods for  
6 purposes of this section. Upon receipt of such notice  
7 of nonconformity the manufacturer shall, at its option,  
8 service or repair the goods at the buyer's residence,  
9 pick up the goods for service and repair, or arrange  
10 transporting the goods to its service and repair facility.  
11 All reasonable costs of transporting the goods when the  
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 the  
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.

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  
2 denominator 120,000 and having as its numerator  
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  
6 repair facility for correction of the problem that gave  
7 to the nonconformity. Nothing in this paragraph shall  
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 for  
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 of the  
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

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1 regulations read on January 1, 1987, Division  
2 (commencing with Section 2101) of the Commer  
3 Code, and this chapter.  
4 (E) Require the manufacturer, when the pro  
5 orders either that the nonconforming motor vehicle  
6 replaced if the buyer consents to this remedy or  
7 restitution be made to the buyer, to replace the mo  
8 vehicle or make restitution in accordance with parag  
9 (2) of subdivision (d).  
10 (F) Provide, at the request of the arbitrator  
11 majority of the arbitration panel, for an inspection  
12 written report on the condition of a nonconforming  
13 motor vehicle, at no cost to the buyer, by an autom  
14 expert who is independent of the manufacturer.  
15 (G) Render decisions which consider and provide  
16 rights and remedies conferred in regulations of  
17 Federal Trade Commission contained in Part 703 of  
18 16 of the Code of Federal Regulations as those regula  
19 read on January 1, 1987, Division 2 (commencing w  
20 Section 2101) of the Commercial Code, and this chap  
21 Nothing in this chapter requires that, to be certified  
22 qualified third party dispute resolution process pursu  
23 to this section, decisions of the process must consid  
24 provide remedies in the form of awards of punish  
25 damages or multiple damages, under subdivision (c)  
26 Section 1794, or of attorney's fees under subdivision  
27 of Section 1794, or of consequential damages other th  
28 as provided in subdivisions (a) and (b) of Section 17  
29 including, but not limited to, reasonable repair, tow  
30 and rental car costs actually incurred by the buyer.  
31 (H) Obtain and maintain certification by the Bure  
32 of Automotive Repair pursuant to Chapter 12  
33 (commencing with Section 9889.70) of Division 3 of  
34 Business and Professions Code.  
35 (4) For the purposes of subdivision (d) and  
36 subdivision the following terms have the followin  
37 meanings:  
38 (A) "Nonconformity" means a nonconformity wh  
39 substantially impairs the use, value, or safety of the  
40 motor vehicle to the buyer or lessee.

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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,  
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 of  
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, 6904  
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, Section  
26 2714 and 2715 of the Commercial Code shall apply, and  
27 the measure of damages shall include the cost of repair  
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

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1 dollars (\$110,000,000) and the amount so transferred shall  
2 be transferred, to the extent funds are available  
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  
8 use taxes on fuel, as defined for purposes of the Use Tax  
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  
13 be 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  
24 of Division 3 of Title 2 of the Government Code  
25 governing such matters as are specifically committed  
26 its jurisdiction.

27 (b) Hear and consider, within the limitations and  
28 accordance with the procedure provided, an appeal  
29 presented by an applicant for, or holder of, a license  
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,  
39 representative pursuant to Chapter 4 (commencing with  
40 Section 11700) of Division 5 submitted by any person

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).

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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 1789.70) to Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794 of, and to add Section 1793.25 of 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 of new motor vehicles to require the manufacturer or its

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representative to replace the vehicle or make restitution 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 definition of "motor vehicle," "new motor vehicle," and "qualified third party dispute resolution process" and define the "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. The bill 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 an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote:  $\frac{3}{4}$ . Appropriation: yes. Fiscal committee: State-mandated local program: no.

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

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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

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(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon the estimate of the number of sales, leases, and dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e) The New Motor Vehicle Board may adopt regulations to implement this section.

9889.76. This chapter shall become operative on January 1, 1988.

SEC. 2. 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 or 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 this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. Warranty service contracts may provide for a

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, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

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

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

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1 nonconformity, delivery cannot reasonably  
 2 accomplished. If the buyer cannot return  
 3 nonconforming goods for any of these reasons, he or  
 4 shall notify the manufacturer or its nearest service  
 5 repair facility within the state. Written notice  
 6 nonconformity to the manufacturer or its service  
 7 repair facility shall constitute return of the goods  
 8 purposes of this section. Upon receipt of such notice  
 9 nonconformity the manufacturer shall, at its option,  
 10 service or repair the goods at the buyer's residence,  
 11 pick up the goods for service and repair, or arrange  
 12 transporting the goods to its service and repair facility.  
 13 All reasonable costs of transporting the goods when  
 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  
 36 in 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 amount of the purchase price paid by the buyer prior to the time the buyer first delivered  
 35 the vehicle to the manufacturer or distributor, or its  
 36 authorized service and repair facility for correction of the  
 37 problem that gave rise to the nonconformity. The  
 38 amount directly attributable to use by the buyer shall be  
 39 determined by multiplying the actual price of the new  
 40

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1 motor vehicle paid or payable by the buyer, including  
 2 any charges for transportation  
 3 manufacturer-installed options, by a fraction having a  
 4 denominator 120,000 and having as its numerator  
 5 number of miles traveled by the new motor vehicle prior  
 6 to the time the buyer first delivered the vehicle to  
 7 manufacturer or distributor, or its authorized service  
 8 repair facility for correction of the problem that gave  
 9 to the nonconformity. Nothing in this paragraph shall  
 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  
 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  
 22 reason of repair of nonconformities by the manufacturer  
 23 or its agents for a cumulative total of more than  
 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  
 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

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

(3) A qualified third party dispute resolution process  
 shall ~~do~~ *be one that does* all of the following:

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

(B) ~~Render~~ *Renders* decisions which are binding on  
 the manufacturer if the buyer elects to accept the  
 decision.

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

(D) ~~Provide~~ *Provides* arbitrators who are assigned to

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1 decide disputes with copies of, and instruction in  
2 provisions of the Federal Trade Commission's regula-  
3 in Part 703 of Title 16 of the Code of Federal Regula-  
4 as those regulations read on January 1, 1987, Division  
5 (commencing with Section 2101) of the Comm-  
6 Code, and this chapter.

7 (E) ~~Require~~ *Requires* the manufacturer, when  
8 process orders either that the nonconforming in-  
9 vehicle be replaced if the buyer consents to this remedy  
10 or that restitution be made to the buyer, to replace  
11 motor vehicle or make restitution in accordance with  
12 paragraph (2) of subdivision (d).

13 (F) ~~Provide~~ *Provides*, at the request of the arbit-  
14 or a majority of the arbitration panel, for an inspect-  
15 and written report on the condition of a nonconforming  
16 motor vehicle, at no cost to the buyer, by an automot-  
17 expert who is independent of the manufacturer.

18 (G) ~~Render~~ *Renders* decisions which consider  
19 provide the rights and remedies conferred in regula-  
20 of the Federal Trade Commission contained in Part  
21 of Title 16 of the Code of Federal Regulations as the  
22 regulations read on January 1, 1987, Division  
23 (commencing with Section 2101) of the Comm-  
24 Code, and this chapter. Nothing in this chapter requ-  
25 that, to be certified as a qualified third party dis-  
26 resolution process pursuant to this section, decisions  
27 the process must consider or provide remedies in  
28 form of awards of punitive damages or multiple damag-  
29 under subdivision (c) of Section 1794, or of attorney's  
30 under subdivision (d) of Section 1794, or of consequen-  
31 damages other than as provided in subdivisions (a)  
32 (b) of Section 1794, including, but not limited  
33 reasonable repair, towing and rental car costs actu-  
34 incurred by the buyer.

35 (H) ~~Obtain and maintain~~ *Requires that no arbit-*  
36 *deciding a dispute may be a party to the dispute, or*  
37 *employee, agent, or dealer for the manufacturer,*  
38 *that no other person, including an employee, agent,*  
39 *dealer for the manufacturer, may be allowed*  
40 *participate in formal or informal discussions with*

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

7 SEC. 3. Section 1793.25 is added to the Civil Code  
 8 read:

9 1793.25. (a) Notwithstanding Part 1 (commencing  
 10 with Section 6001) of Division 2 of the Revenue  
 11 Taxation Code, the State Board of Equalization  
 12 reimburse the manufacturer of a new motor vehicle  
 13 an amount equal to the sales tax which the manufacturer  
 14 includes in making restitution to the buyer pursuant  
 15 subparagraph (B) of paragraph (2) of subdivision (d)  
 16 Section 1793.2, when satisfactory proof is provided  
 17 the retailer of the motor vehicle for which  
 18 manufacturer is making restitution has reported and  
 19 the sales tax on the gross receipts from the sale of  
 20 motor vehicle. The State Board of Equalization  
 21 adopt rules and regulations to carry out, facilitate  
 22 compliance with, or prevent circumvention or evasion  
 23 this section.

24 (b) Nothing in this section shall in any way change  
 25 application of the sales and use tax to the gross receipt  
 26 and the sales price from the sale, and the storage, use  
 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  
 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, 6904  
 35 and 6908 thereof, insofar as those provisions are  
 36 inconsistent with this section.

37 SEC. 4. Section 1794 of the Civil Code is amended  
 38 read:

39 1794. (a) Any buyer of consumer goods who  
 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.

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1 branch, distributor branch, or representative.

2 (3) Order the department to exercise any and  
3 authority or power that the department may have  
4 respect to the issuance, renewal, refusal to rene  
5 suspension, or revocation of the license of any new mo  
6 vehicle dealer, manufacturer, manufacturer bran  
7 distributor, distributor branch, or representative as  
8 license is required under Chapter 4 (commencing  
9 Section 11700) of Division 5.

10 (d) Hear and consider, within the limitations and  
11 accordance with the procedure provided, a prot  
12 presented by a franchisee pursuant to Section 3060, 30  
13 3064, or 3065. A member of the board who is a new mo  
14 vehicle dealer may not participate in, hear, comm  
15 advise other members upon, or decide, any mat  
16 involving a protest filed pursuant to Article  
17 (commencing with Section 3060).

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AB 2057 (Tanner)  
6/15/87

ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION  
REPUBLICAN ANALYSIS

AB 2057 (Tanner) -- LEMON LAW - PART II

Version: 6/11/87

Vice Chairman: Larry Stirling

Recommendation: Oppose

Vote: 2/3 (Appropriation)

Summary: Requires Bureau of Auto Repair to "certify" all arbitration panels created by the original "Lemon Law." Requires charge on new cars to pay for process. Also allows treble damages for any consumer who sues and wins against any auto manufacturer who does not have a "certified" arbitration panel; or treble damages for any consumer who proves that his arbitration panel did not follow procedures laid out in this bill. Fiscal effect: Tax of up to \$1 per new car sold in state. Estimated revenue: up to \$300,000 a year.

Supported by CA Public Interest Research Group (CALPIRG) (Sponsor). Opposed by Automobile Importers of America, FORD, GM. Governor's position: None on file.

Comments: The author claims the present voluntary "lemon law" process is not working. Her answer is to make it better by turning it over to the government -- that paragon of efficiency and consumer protection.

Today, if you have a "lemon," you can go to the manufacturer, who then convenes an arbitration panel. If the panel rules against you, you can still go to court. If the panel rules in your favor, the car company cannot appeal.

But the author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel. (Virtually all the manufacturers sub-contract with the Better Business Bureau for arbitration.)

So this bill creates a state system to "certify" that the panels are fair. It also effectively mandates that all companies submit to it -- those companies that don't have a state certified system will be liable for triple damages (plus attorney's fees) for any suit regarding a "lemon" car that is brought before them.

Mandatory certification will turn these informal proceedings into formal court hearings. (This bill also allows consumers to collect triple damages if they can prove that their certified process did not dot all the "i's" and cross all the "t's".) The result will be the same problems we have with our legal system and our regulatory agencies -- an emphasis on detail and procedure, countless appeals over piddley little questions, endless litigation, lots of government employees and huge backlogs. Ironically, this bill comes at a time when the courts and the regulatory agencies are looking into voluntary arbitration as a way to relieve their backlogs.

Assembly Republican Committee Vote  
GE & CP -- 5/5/87

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Wanted  
not so.

(6-1) Ayes: Stirling  
Noes: Harvey  
N.V : Frazee  
Abs: Grisham

Ways & Means -- 6/3/87

(18-5) Ayes: D. Brown, Ferguson, Hill  
Noes: Baker, Johnson, Jones, Lewis, McClintock  
Consultant: John Caldwell

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## ASSEMBLY THIRD READING

AB 2057 (Tanner) - As Amended: June 11, 1987

## ASSEMBLY ACTIONS:

COMMITTEE	G. E. & CON. PRO.	VOTE 6-1	COMMITTEE	W. & M.	VOTE 18-5
-----------	-------------------	----------	-----------	---------	-----------

Ayes: Chacon, Eastin, Hannigan, Sher,  
Stirling, Areias

Ayes: Vasconcellos, Bronzan,  
D. Brown, Calderon, Campbell,  
Eaves, Ferguson, Hannigan,  
Hayden, Hill, Isenberg,  
Leonard, Margolin, O'Connell,  
Peace, Roos, Seastrand,  
M. Waters

Nays: Harvey

Nays: Baker, Johnson, Jones, Lewis,  
McClintock

DIGEST

2/3 vote required.

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the lemon law.

Specifically, the lemon law:

- 1) Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or more than 30 days out of service for service/repair of one or more major defects within the first year or 12,000 miles of use.
- 2) Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.
- 3) Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.

- continued -

AB 2057

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This bill amends and clarifies the lemon law. It specifies a structure for certifying third-party dispute mechanisms, specifies requirements for certification and provides for treble damages and attorney's fees to consumers who obtain a judgment against a manufacturer who does not have a certified lemon law arbitration program. (The bill would become effective July 1, 1988.) Specifically, it:

- 1) Requires the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs; and submit a biennial report to the Legislature evaluating the effectiveness of the program.
- 2) Authorizes BAR to charge fees, to be collected by the New Motor Vehicle Board (NMVB) in DMV beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- 3) Requires motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer would be free to take restitution in place of a replacement vehicle.
- 4) Specifies that the following is included in the replacement and refund option:
  - a) In case of replacement, the new motor vehicle must be accompanied by all express and implied warranties. The manufacturer must pay for, or to, the buyer the amount of any sales or use tax, license and registration fees, or other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages the buyer is entitled to including reasonable repair, towing, and rental car costs.
  - b) In case of restitution, the manufacturer must pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees, and registration fees plus incidental damages. The amount directly attributable to use by the buyer must be determined as prescribed and may be subtracted from the total owed to the buyer.

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- 5) Clarifies that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- 6) Sets forth a qualified third-party dispute resolution process, which among other things, clarifies that dealer and/or manufacturer participation in the decisionmaking process is not acceptable unless the consumer is allowed equal participation; specifies certain requirements for how arbitration boards should follow up on repair attempt decisions and requires compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.
- 7) Amends the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- 8) Prevents a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems are disclosed, the problems are corrected, and the manufacturer warrants that the vehicle is free of those problems for one year.
- 9) Requires the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.
- 10) Provides for treble damages and reasonable attorney's fees and costs if the buyer is awarded a judgment and the manufacturer does not maintain a qualified third-party dispute resolution process as established by this chapter.

FISCAL EFFECT

According to the Legislative Analyst, this bill:

- 1) Results in up to \$158,000 in costs to the Certification Account in the Automotive Repair Fund (created by this bill) for the last half of 1987-88 and up to \$293,000 annually, thereafter, for the BAR to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.
- 2) Generates up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
- 3) Results in an unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

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COMMENTS

- 1) This bill, according to the author, strengthens the existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.
- 2) AB 3611 (Tanner) of the 1985-1986 Session made many of the same changes except for the provision in this bill for treble damages. That bill died in the Senate.
- 3) The author and proponents state that, since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.
- 4) Opponents of the bill state that the number of consumers dissatisfied with the current arbitration process is small relative to the number of arbitrations. They do not object to most of the provisions which update the lemon law; however, they strenuously object to the provision of treble damages and an award of attorney's fees to consumers. They feel this creates an improper incentive for consumers to hire an attorney to go to court over procedural issues. They feel treble damages, usually associated with gross and willful wrongdoing, would set a dangerous precedent by making consumers eligible for a financial windfall by the sole fact that a new car manufacturer may not have a certified lemon law arbitration program.

Ann Evans  
324-2721  
6/17/87:ageconpro

AB 2057  
Page 4

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JUL 6 1986

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 2057

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.

Author introduced bill.

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

<u>Support:</u> CA Public Interest Group Consumers Union Motor Voters Attorney General	<u>OPPOSITION:</u> Ford Motor Co. General Motors Corp. Automobile Importers of America Chrysler Motors
---	---

- (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 3611 (1986)

2. Purpose

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

- 1) Ensures that owners of "lemon" cars will be reimbursed for sales tax and license fees when manufacturer buys back the vehicle.
- 2) Creates a program to ensure that auto manufacturer-run arbitration panels are operated fairly and impartially and in accordance with applicable law and regulations.

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.

Arnie Peters 5-7783

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

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**JOHN K. VAN DE KAMP**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



3580 WILSHIRE BOULEVARD, ROOM 800  
LOS ANGELES 90010  
(213) 736-2304

## **BACKGROUND STATEMENT**

### **AB 2057 (Tanner) Warranties: New Motor Vehicles**

Over the past two years, the Attorney General's Office has heard from hundreds of frustrated new car buyers who cannot get manufacturers to fix defects or replace or buy back "lemons."

Current law requires that a manufacturer honor its written warranties. If a manufacturer is unable to correct a defective new motor vehicle within a reasonable number of attempts, then the manufacturer must replace the vehicle or reimburse the buyer. A manufacturer may establish an arbitration procedure to resolve warranty disputes.

The Attorney General's Office has looked at each of the arbitration programs in California. In many cases, these programs are not fair and impartial. For example, employees of the manufacturer may be involved in the decision-making process. Arbitrators often are not instructed in California's warranty law and make decisions contrary to law. In addition, arbitrators have limited power to order an independent expert examination of a "lemon" vehicle and have to rely on the manufacturer's technical evaluation.

AB 2057 strengthens arbitration programs by incorporating into their framework safeguards to ensure a fair and impartial arbitration. The bill also permits the Bureau of Automotive Repair to certify that an arbitration program complies with statutory requirements.

Additionally, the bill allows a court in its discretion to impose a penalty on a manufacturer which fails to honor its warranty, fails to correct defects within a reasonable number of attempts, fails to replace or buy back a "lemon" vehicle, and requires a buyer to go to court to resolve the dispute. The penalty amount is limited to twice the amount of actual damages. But, no penalty can be awarded if the manufacturer maintains an arbitration program that substantially complies with statutory requirements.

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California is not alone in trying to resolve this growing area of discontent with new motor vehicle warranty problems. Eight other states have already enacted far stronger "lemon" laws and have set up state-run arbitration programs. Four other states have statutes or pending legislation similar to AB 2057.

This bill will invigorate the existing automobile "lemon" law which has not provided an adequate remedy to buyers of defective new cars.

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**LEGAL  
ANALYSIS OF CALIFORNIA  
ASSEMBLY BILL 2057**

**Prepared by  
McCUTCHEN, BLACK, VERLEGER & SHEA  
Los Angeles, California**

**June 30, 1987**

*30 page  
document*

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**MJN/601**

George R. Steffes

1121 L STREET

SUITE

909

LEGISLATIVE  
ADVOCATES

SACRAMENTO  
CALIFORNIA 95814

TELEPHONE  
916 76-4446034

July 7, 1987

**MEMORANDUM**

**TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE**

**FROM: SARAH MICHAEL, REPRESENTING THE AUTOMOBILE IMPORTERS OF AMERICA**

**SUBJECT: OPPOSITION TO AB 2057 RELATING TO NEW CAR WARRANTIES AND THE LEMON LAW - HEARING JULY 14, 1987**

-----  
On behalf of the Automobile Importers of America, we are writing in opposition to AB 2057 which is before the Senate Judiciary Committee. The Automobile Importers of America (AIA) includes most European and Asian vehicle manufacturers offering cars in California.

AB 2057 makes a number of procedural changes to California's Lemon Law which are supported by consumer groups. The bill also creates a new bureaucratic certification process for auto manufacturers' voluntary lemon law programs. In addition, it would impose treble damages and an award of attorney's fees to consumers when they win a lawsuit against a manufacturer who has failed to establish or maintain a certified lemon law arbitration program.

AIA feels that the creation of a certification process and imposition of treble damages and attorney fees against manufacturers who don't have a "certified" program if a consumer wins in court are unwarranted and unconstitutional. AIA has undertaken a detailed legal analysis of AB 2057 which concludes that it is unconstitutional because it violates a number of basic rights. Attached is a checklist of constitutional problems with AB 2057.

AIA must continue to oppose AB 2057 as long as state certification and treble damages and attorney fees are included in the bill.

For these reasons, we urge your "no" vote on AB 2057.

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## CONSTITUTIONAL ARGUMENTS

The failure of AB 2057 to afford manufacturers a jury trial is unconstitutional under the California Constitution.

The civil penalties provision is unconstitutional because it penalizes the manufacturer for exercising its right to a jury trial.

The bill is unconstitutional because it delegates judicial power to arbitrators, who are not judicial officers.

The bill's requirement that a manufacturer must have a dispute resolution process conflicts with the provisions of the Magnuson-Moss Warranty Act, which encourages voluntary programs, and with specific provisions of 16 C.F.R. Section 703.

AB 2057 is unconstitutional on equal protection grounds because it affords unequal treatment to manufacturers in regards to fundamental rights.

The admission of the arbitrator's decision into evidence without providing the right to cross-examine the arbitrator is unconstitutional.

Section 4 of the bill is unlawful because it (1) impermissibly imposes civil penalties on manufacturers for the acts of third parties and (2) apparently imposes a double penalty for the same offense.

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AUTOMOBILE IMPORTERS OF AMERICA, INC.



CHECKLIST OF CONSTITUTIONAL PROBLEMS WITH A.B. 2057

- o The failure of A.B. 2057 to afford manufacturers a jury trial is unconstitutional under the California Constitution. The right to a jury trial is guaranteed by the California Constitution.<sup>1</sup> Consumer warranty claims are essentially contract claims,<sup>2</sup> for which the jury trial right is guaranteed.<sup>3</sup> Moreover, under California law, the right to jury trial cannot be infringed by a statute purporting to compel arbitration without the right of trial de novo.<sup>4</sup>
- o The civil penalties provision is unconstitutional because it penalizes the manufacturer for exercising its right to a jury trial. Civil penalties are penal in nature.<sup>5</sup> In California, "[i]t is well settled that to punish a person for exercising individual rights [such as the right to jury trial] is a due process violation of the most basic sort."<sup>6</sup>
- o The bill is unconstitutional because it delegates judicial power to arbitrators, who are not judicial officers. Under the California Constitution, judicial powers and responsibilities are vested solely in the judicial branch and may not be exercised by any other branch.<sup>7</sup> Thus, "the legislature is without power, in the absence of constitutional provision authorizing the same, to confer judicial functions upon a statewide administrative agency."<sup>8</sup> In the absence of de novo judicial review, the delegation of judicial functions--such as that in the A.B. 2057--to nonjudicial bodies is unconstitutional.<sup>9</sup>
- o The bill's requirement that a manufacturer must have a dispute resolution process conflicts with the provisions of the Magnuson-Moss Warranty Act, which encourages voluntary programs, and with specific provisions of 16 C.F.R. Section 703.
- o A.B. 2057 is unconstitutional on equal protection grounds because it affords unequal treatment to manufacturers in regards to fundamental rights. Under A.B. 2057, the decision of a dispute resolution process is binding on the manufacturer but not on the consumer, who is free to challenge the decision in court. It is impermissible to grant a fundamental right such as the right to jury trial, to one class and deny

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AUTOMOBILE IMPORTERS OF AMERICA, INC.

-2-

it to another.<sup>10</sup> Moreover, under California law it is impermissible to discriminate against manufacturers merely because they may have more wealth than consumers.<sup>11</sup>

- o The admission of the arbitrator's decision into evidence without providing the right to cross-examine the arbitrator is unconstitutional. In California, "denial of the right to cross-examination [of a non-judicial decision-maker] cannot constitutionally be enforced."<sup>12</sup> Consequently, A.B. 2057, which compels the manufacturer into arbitration by the threat of civil penalties and then admits the arbitrator's decision into evidence without cross-examination, is unconstitutional.<sup>13</sup>
- o Section 4 of the Bill is unlawful because it (1) impermissibly imposes civil penalties on manufacturers for the acts of third parties and (2) apparently imposes a double penalty for the same offense. The civil penalty of Section 1794(e) is tantamount to a punitive damage award,<sup>14</sup> and thus may only be imposed on the party actually responsible for the wrong,<sup>15</sup> not on a manufacturer for the actions of the "third party dispute resolution process" that must, under FTC rules, be independent of the manufacturer. The civil penalties under Section 1794(e) duplicate the penalties under Section 1794(c) and are, therefore, unlawful.<sup>16</sup>

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AUTOMOBILE IMPORTERS OF AMERICA, INC.

CHECKLIST OF CONSTITUTIONAL PROBLEMS WITH A.B. 2057

- o The failure of A.B. 2057 to afford manufacturers a jury trial is unconstitutional under the California Constitution. The right to a jury trial is guaranteed by the California Constitution.<sup>1</sup> Consumer warranty claims are essentially contract claims,<sup>2</sup> for which the jury trial right is guaranteed.<sup>3</sup> Moreover, under California law, the right to jury trial cannot be infringed by a statute purporting to compel arbitration without the right of trial de novo.<sup>4</sup>
- o The civil penalties provision is unconstitutional because it penalizes the manufacturer for exercising its right to a jury trial. Civil penalties are penal in nature.<sup>5</sup> In California, "[i]t is well settled that to punish a person for exercising individual rights [such as the right to jury trial] is a due process violation of the most basic sort."<sup>6</sup>
- o The bill is unconstitutional because it delegates judicial power to arbitrators, who are not judicial officers. Under the California Constitution, judicial powers and responsibilities are vested solely in the judicial branch and may not be exercised by any other branch.<sup>7</sup> Thus, "the legislature is without power, in the absence of constitutional provision authorizing the same, to confer judicial functions upon a statewide administrative agency."<sup>8</sup> In the absence of de novo judicial review, the delegation of judicial functions--such as that in the A.B. 2057--to nonjudicial bodies is unconstitutional.<sup>9</sup>
- o The bill's requirement that a manufacturer must have a dispute resolution process conflicts with the provisions of the Magnuson-Moss Warranty Act, which encourages voluntary programs, and with specific provisions of 16 C.F.R. Section 703.
- o A.B. 2057 is unconstitutional on equal protection grounds because it affords unequal treatment to manufacturers in regards to fundamental rights. Under A.B. 2057, the decision of a dispute resolution process is binding on the manufacturer but not on the consumer, who is free to challenge the decision in court. It is impermissible to grant a fundamental right, such as the right to jury trial, to one class and deny

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AUTOMOBILE IMPORTERS OF AMERICA, INC.

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it to another.<sup>10</sup> Moreover, under California law it is impermissible to discriminate against manufacturers merely because they may have more wealth than consumers.<sup>11</sup>

- o The admission of the arbitrator's decision into evidence without providing the right to cross-examine the arbitrator is unconstitutional. In California, "denial of the right to cross-examination [of a non-judicial decision-maker] cannot constitutionally be enforced."<sup>12</sup> Consequently, A.B 2057, which compels the manufacturer into arbitration by the threat of civil penalties and then admits the arbitrator's decision into evidence without cross-examination, is unconstitutional.<sup>13</sup>

- o Section 4 of the Bill is unlawful because it (1) impermissibly imposes civil penalties on manufacturers for the acts of third parties and (2) apparently imposes a double penalty for the same offense. The civil penalty of Section 1794(e) is tantamount to a punitive damage award,<sup>14</sup> and thus may only be imposed on the party actually responsible for the wrong,<sup>15</sup> not on a manufacturer for the actions of the "third party dispute resolution process" that must, under FTC rules, be independent of the manufacturer. The civil penalties under Section 1794(e) duplicate the penalties under Section 1794(c) and are, therefore, unlawful.<sup>16</sup>

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AUTOMOBILE IMPORTERS OF AMERICA, INC.

FOOTNOTES

1. C & K Engineering Contractors v. Amber Steel Co., Inc., 23 Cal. 3d 1, 8, 557 P. 2d 1136 (1978).
2. See Keith v. Buchanan, 173 Cal. App. 3d 13, 19, 220 Cal. Rptr. 392 (1985).
3. C & K Engineering Contractors, 23 Cal. 3d at 9.
4. Herbert v. Harn, 133 Cal. App. 3d 465, 469, 184 Cal. Rptr. 83 (1982).
5. Hale v. Morgan, 22 Cal. 3d 388, 405, 149 Cal. Rptr. 375, 584 P. 2d 512 (1978).
6. In re Lewallen, 23 Cal. 3d 274, 278, 590 P.2d 383 (1979).
7. Cal. Const., Art. III, Sec. 3; Art. VI, Sec. 1.
8. Standard Oil Co. of California v. State Board of Equalization, 8 Cal. 2d. 557, 559, 59 P.2d 119 (1936).
9. Laiane v. California State Board of Optometry, 19 Cal. 2d 831, 834-35, 123 P.2d 457 (1942).
10. Cf. Pyler v. Doe, 457 U.S. 202, 216-17 (1982); United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).
11. See Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1214 (1971) (tax revenue distinctions based upon school district wealth are unconstitutional).
12. McLaughlin v. Superior Court, 140 Cal. App. 3d 473, 481, 189 Cal. Rptr. 479 (1983).
13. Statutes like the Magnuson-Moss Act or the current Lemon law--which also make the arbitrator's decision admissible--survive constitutional scrutiny because the arbitration process is voluntary.
14. Troensegaard v. Silvercrest Industries Inc., 175 Cal. App. 3d 218, 226, 220 Cal. Rptr. 712 (1985).
15. See Magallanes v. Superior Court, 167 Cal. App. 3d 878, 889, 213 Cal. Rptr. 647 (1985).
16. Silvercrest Industries, 175 Cal. App. 3d at 227.

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**GENERAL MOTORS CORPORATION**

1170 PARK EXECUTIVE BUILDING, 925 L STREET, SACRAMENTO, CALIFORNIA 95814

July 8, 1987

Honorable Bill Lockyer, Chairman  
Senate Judiciary Committee  
State Capitol Building, Room 2032  
Sacramento, California 95814

Re: AB 2057 (Tanner) Lemon Law Revision

Dear Bill:

This is to advise you that the General Motors Corporation is opposed to AB 2057 (Tanner), which is scheduled for hearing by the Senate Judiciary Committee on July 14.

AB 2057 would create a new certification process for automobile manufacturers voluntary arbitration programs. In so doing, it would formalize the procedure to the point where an arbitrator would be required to be trained in the specifics of the lemon law. If one of the arbitrators misapplied the principles of the lemon law, the manufacturer would be liable for treble damages and attorney fees. General Motors has about 1,000 arbitrators in California. No more than 250 are attorneys. It seems unreasonable to provide for treble damages based upon the decision of a layman arbitrator, untrained in the law.

The idea of General Motors' arbitration program, which is voluntary and predates California's lemon law, is that it be informal and non-legal, that the process be easily understood by the consumer, and that a lengthy court setting be avoided. AB 2057 would formalize the procedure by attempting to make layman arbitrators judges and then injecting treble damages.

For these reasons we must respectfully oppose AB 2057.

Sincerely,



G. Lee Ridgeway, Regional Manager  
Industry-Government Relations

GLR/rp

cc: Members, Senate Judiciary Committee  
Assemblywoman Sally Tanner

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MJN/609





Regional Governmental Affairs Office  
Ford Motor Company

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

July 10, 1987

To: Members, Senate Judiciary Committee

Subject: Opposition to AB 2057


Ford Motor Company is opposed to Assembly Bill 2057, relating to vehicle warranties, which is set for hearing in the Senate Judiciary Committee July 14, 1987. Ford's opposition is based on three main issues:

(1) We feel this bill raises serious constitutional issues as contained in the attached Checklist of Constitutional Problems with AB 2057 prepared by Automobile Importers of America, Inc., dated July 2, 1987.

(2) Ford also opposes the multiple damages provision of the bill as it would encourage litigation. The recovery of damages would place a high premium on prevailing under the statute, rendering "lemons" extremely valuable. A multiple damage provision is particularly unfair if it penalizes the manufacturer for the actions of a third party dispute resolution mechanism over which it does not exert control.

(3) We further oppose the requirement that our voluntary third party lemon law arbitration programs must be certified by a state bureaucratic certification process.

We urge your NO" vote on AB 2057.

  
RICHARD L. DUGALLY  
Regional Manager  
Governmental Affairs

RLD:cme

cc: Honorable Sally Tanner  
Consultants, Senate Judiciary Committee ✓

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

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DEPARTMENT OF JUSTICE  
BILL ANALYSIS

DATE: July 9, 1987

BILL NO.: AB 2057

ANALYST: Ronald A. Reiter

AUTHOR: Tanner

BRANCH/SECTION: Consumer

DATE LAST AMENDED: 6-11-87

TELEPHONE: (213) 736-2159

I. CURRENT LAW

The Song-Beverly Consumer Warranty Act provides that, if the manufacturer is unable to conform goods to the standards of the manufacturer's express warranty within a reasonable number of service or repair attempts, the manufacturer must either replace the goods or reimburse the buyer for the purchase price less an amount attributable to the buyer's use of the product prior to the discovery of the nonconformity. Song-Beverly creates a presumption that a reasonable number of repair attempts of a motor vehicle have occurred if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either the same problem has been subject to repair four or more times by the manufacturer or the vehicle is out of service for repair for a cumulative total of more than 30 days since delivery of the vehicle. A manufacturer is permitted, but not required, to establish a qualified third party dispute resolution process to arbitrate a buyer's claim that a vehicle does not conform to the manufacturer's express warranty. If the manufacturer establishes a qualified process, the buyer must submit his or her claim to the third party process to invoke the presumption regarding what is a reasonable number of repair attempts. The buyer may assert the presumption in court only if (a) a third party process does not exist, (b) the buyer is dissatisfied with the third party decision, or (c) the manufacturer neglects to promptly fulfill the terms of the third party's decision. These statutory provisions are popularly referred to as the "lemon law."

The lemon law establishes that a qualified third party dispute resolution process must (a) comply with minimum requirements established by the Federal Commission for informal dispute resolution procedures, (b) render decisions which are binding on the manufacturer if the buyer elects to accept the decision, and (c) prescribe a reasonable time not to exceed 30 days within which the manufacturer must fulfill the terms of the decision.

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## II. CHANGE MADE BY BILL

This bill would authorize the Bureau of Automotive Repair to certify that the third party dispute resolution process complies with the minimum requirements established by Song-Beverly. The certification procedure would be funded from a \$1 fee for each new vehicle sold, leased, or distributed in this state.

The bill also expands and clarifies some of the provisions of the lemon law. For example, the bill would permit a buyer to elect reimbursement in lieu of replacement if a manufacturer is unable to conform a new vehicle to express warranty specifications. The bill establishes a formula for determining the buyer's obligation to the manufacturer for the use of a vehicle prior to discovery of the defect. The bill also provides for the reimbursement of sales tax, official fees, and incidental damages such as towing and rental car costs. The manufacturer would be able to recover the sales tax from the state.

In addition, modifications are made to the third party dispute resolution process. For example, arbitrators would receive copies of applicable warranty law and would be able to request an expert to provide a written report on the condition of a non-conforming motor vehicle at no cost to the buyer.

Significantly, the bill provides that a buyer may recover treble damages in a breach of warranty action against the manufacturer if the manufacturer fails to rebut the presumption that it did not repair the vehicle in a reasonable number of attempts and if the manufacturer either does not maintain a qualified third party process or its third party process willfully fails to comply with required procedures in the buyer's case.

## III. ANALYSIS

The existing lemon law was supposed to provide new car buyers with an efficient and economical forum for the resolution of warranty disputes. The law, however, has not worked well.

Some third party resolution mechanisms established by manufacturers did not comply with minimum statutory criteria. Manufacturers, however, did not violate the law because they were not required to establish any third party dispute resolution processes; the third party procedure is entirely permissive. Even if statutory criteria were met, third party processes often have rendered decisions that were contrary to law because arbitrators are not trained in, and were not even provided copies of, applicable warranty

law. In addition, almost all cases involve technical disputes, and frequently the only expert testimony is provided by the manufacturer in its own behalf. Consumers are usually unable to afford any expert analysis and arbitrators usually have no power to order an independent expert examination of the vehicle.

Furthermore, apparently favorable results to a consumer often were costly and impractical. For example, if a third party process ruled that the manufacturer failed to correct defects, the manufacturer would not refund the purchase price but would attempt to replace the vehicle. The replacement vehicle would be a later model car, and the buyer would be required to pay the price increase between the new model and the originally purchased vehicle. In addition, the buyer would often be required to pay a substantial amount for the use of the non-conforming vehicle prior to the discovery of the defect. Consequently, a consumer might be unable to afford a successful arbitration result.

In recent years, some manufacturers have abandoned the use of third party dispute resolution processes. As a result, the availability of an efficient and economical alternative to court action in new vehicle warranty disputes has largely evaporated. Consequently, the intended salutary effects of the original lemon law have not occurred.

This bill provides some significant improvements to the third party resolution procedure and the substantive law determining the manufacturer's liability for its failure to meet its express warranties. If a buyer is successful in establishing that the manufacturer failed to conform a defective vehicle to express warranties within a reasonable number of attempts, the buyer can insist on a refund of the purchase price instead of a new vehicle. The bill more clearly specifies what must be done if the manufacturer replaces a vehicle and provides a description of items of cost which must be refunded to a buyer if a refund is ordered. In addition, the bill specifies a formula for determining the buyer's liability for vehicle use prior to the buyer's discovery of the nonconforming defect.

The bill, moreover, makes helpful procedural reforms. Arbitrators assigned to decide disputes must be provided with copies of, and instruction in, applicable warranty law. Also, arbitrators can request an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer. This report can be critically significant in many cases involving technical disputes. The certification process will remove proof



problems regarding whether a third party process meets statutory criteria.

One of the most significant aspects of the bill is the provision of an incentive to manufacturers to establish a voluntary qualified third party dispute resolution process. The bill provides for treble damages to a buyer who brings an action against a manufacturer which both breaches its warranty to the consumer and fails to provide a qualified third party process for the resolution of the consumer's dispute.

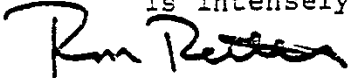
The Legislature could easily provide a treble damage remedy against manufacturers which sell defective vehicles, fail to fix them within a reasonable period of time, and fail to replace the vehicle or reimburse the purchaser for its purchase price. Given the importance of cars to our society and the substantial financial commitment Californians must make to purchase new cars, the failure of a manufacturer to honor its warranties within a reasonable number of repair attempts can easily be viewed as improper. Indeed, the conduct may be oppressive, especially considering the harm caused to new car purchasers from the inconvenience, aggravation, loss of time, possible loss of earnings, and physical hazard from possible safety defects.

The bill, however, does not simply impose treble damages for the manufacturer's failure to meet its warranty obligation. The bill permits the manufacturer to escape the treble damage penalty for its failure to meet its warranty obligations by allowing the manufacturer to establish a qualified third party dispute resolution process. At the very least, this incentive has the laudable objectives of providing an efficient and economical forum for the new car buyer and diverting cases from congested court calendars to an alternative dispute resolution procedure.

The manufacturers contend that the treble damage remedy is unconstitutional because it forces the manufacturer to arbitrate disputes. However, the third party process is voluntary and a manufacturer which does not maintain a third party process is liable for treble damages if the buyer proves that the manufacturer breached its warranty notwithstanding a reasonable number of repair attempts to correct a nonconformity. Thus, the voluntary maintenance of a third party process is a way for manufacturers to escape treble damages for their breach of warranty. While the treble damage remedy will animate manufacturers to adopt a third party process, the remedy is not a penalty which would unconstitutionally coerce mandatory arbitration.

IV. RECOMMENDATION

A. The office should vigorously support this measure which is intensely opposed by motor vehicle manufacturers.



RONALD A. REITER  
Deputy Attorney General

RAR:vh

cc: Andrea S. Ordin  
Herschel T. Elkins

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AMENDMENTS TO ASSEMBLY BILL 2057

The amendments for AB 2057 drafted by the Attorney General's Office do the following:

- 1) Allow the owner of a lemon, if he or she files a lawsuit against the manufacturer and wins, to recover legal costs and up to triple damages. Triple damages are not mandated but may be awarded in the discretion of the court.
- 2) Provide that an award of more than actual damages cannot be made if:
  - a) The manufacturer maintains a certified arbitration program.
  - b) The buyer failed to give the manufacturer notice that ~~the car is a lemon.~~ *the nonconformity etc*
  - c) The manufacturer buys the lemon back or replaces it within 30 days of receiving notice from the buyer.
  - d) The owner of a lemon has already been awarded more than actual damages because the court finds that the manufacturer willfully failed to comply with its obligations under the Song-Beverly Act.

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SENATE COMMITTEE ON JUDICIARY  
Bill Lockyer, Chairman  
1987-88 Regular Session

AP 2057 (Tanner)  
As amended June 11  
Hearing date: July 14, 1987  
Various Codes  
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NEW MOTOR VEHICLE WARRANTIES

HISTORY

Source: Author

Prior Legislation: AB 3611 (1986) - Held in Senate  
Appropriations Committee  
AB 1787 (1982) - Chaptered

Support: California Public Interest Research Group (CALPIRG);  
Consumers' Union; Motor Voters; Attorney General

Opposition: Ford Motor Co; General Motors Corp; Chrysler Motors;  
Automobile Importers of America

Assembly Floor Vote: Ayes 54 - Noes 20

KEY ISSUES

SHOULD THE VEHICLE MANUFACTURERS' VOLUNTARY DISPUTE RESOLUTION  
PROCEDURES BE REPLACED BY A STATE CERTIFIED DISPUTE RESOLUTION  
PROCESS?

SHOULD A VEHICLE MANUFACTURER BE LIABLE TO A BUYER FOR TREBLE  
DAMAGES AND ATTORNEY'S FEES?

PURPOSE

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.

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2057 (Tanner)  
Page 2

This bill would revise the provisions relating to warranties on 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 seller to a manufacturer for a nonconformity, except as specified.

The bill would, on July 1, 1988, create the Certification Account in the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in such actions, and would also increase the award of civil penalties, including treble damages, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

The purpose of this bill is to improve protections for vehicle purchasers under the existing lemon law.

#### COMMENT

##### Existing lemon law

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the lemon law. Specifically, it:

Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or, more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

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-Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.

-Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.

This bill would amend and clarify the lemon law. It would establish a structure for certifying third-party dispute mechanisms, requirements for certification and provide for treble damages and attorney's fees to consumers who obtain a judgement against a manufacturer who does not have a certified lemon law arbitration program.

2. Need for legislation

The purpose of this bill, according to the author, is to strengthen existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The author and proponents state that since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

3. Provisions of the bill

This bill would:

- a) Require the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection

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warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs; and, submit a biennial report to the Legislature evaluating the effectiveness of the program.

- b) Authorize BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV), beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 (one dollar) for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- c) Require motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer were unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- d) Specify what would be included in the replacement and refund option.

-In case of replacement, the new motor vehicle must be accompanied by all express and implied warranties. The manufacturer would pay for, or to, the buyer the amount of any sales or use tax, license and registration fees, and other official fees which the buyer would be obligated to pay in connection with the replacement, plus any incidental damages the buyer would be entitled to including reasonable repair, towing, and rental car costs.

-In case of restitution, the manufacturer must pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees, and registration fees plus incidental damages. The amount directly attributable to use by the buyer would be determined as prescribed and could be subtracted from the total owed to the buyer.

- e) Clarify that the vehicle buyer could assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.

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- f) Set forth a qualified third party dispute resolution process and require compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.
- g) Amend the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- h) Prevent a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems were disclosed, the problems were corrected, and the manufacturer warranted that the vehicle is free of those problems for one year.
- i) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provided the specified refund to the buyer.
- j) Provide for awards of treble damages and reasonable attorney's fees and costs if the buyer were awarded a judgement and the manufacturer did not maintain a qualified third party dispute resolution process as established by this chapter.

4. Opposition

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration process is small relative to the number of arbitrations. They do not object to most of the provisions which update the lemon law, however, they strenuously object to the provisions for treble damages and an award of attorney's fees to consumers. They feel this creates an improper incentive for consumers to hire an attorney to go to court over procedural issues. They feel treble damages, usually associated with gross and willful wrongdoing, would set a dangerous precedent by making consumers eligible for a financial windfall by the sole fact that a new car manufacturer may not have a certified lemon law arbitration program.

a. General Motors

GM opposes the provisions of this bill because it would formalize the manufacturers' heretofore voluntary arbitration procedures to such an extent that the

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arbitrator would need to be trained in the specifics of the lemon Law. They contend the bill would make them liable unreasonably for treble damages and the buyer's attorney's fees if a layman arbitrator untrained in the law, misapplied the lemon Law. GM has approximately 1,000 arbitrators in California, only 250 of whom are attorneys.

b. Automobile Importers of America

AIA which includes most European and Asian vehicle manufacturers selling cars in California, opposes the state certification, treble damages and attorneys' fee award provisions of the bill. They view the certification provisions as creating a new bureaucratic process for the manufacturers' voluntary lemon law programs.

AIA feels the creation of a certification process and imposition of treble damages and attorneys' fees against manufacturers who fail to establish or maintain a certified program, if a consumer wins in court, would be unwarranted and unconstitutional.

In general, opponents of the bill argue that the intent of arbitration programs such as GM's, which predates the lemon law, is that they be voluntary, informal, nonlegal, and easily understood by the consumer procedurally.

5. Possible alternative provisions

As an alternative to the bill's current provisions for mandatory treble damages and attorney's fee awards, the court could be given discretion to award those items where the situation was appropriate and such were warranted. Further, the award of treble damages could be restricted to cases involving "substantial violations". Such a compromise would satisfy the consumer's interests and retain a method to compel the manufacturers meaningful participation in the certification process. Finally, a key issue which should be considered, is whether a manufacturer must have a certified dispute resolution program to avoid the imposition of treble damages and attorneys' fees.

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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 1789.70) 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 representative to replace the vehicle or make restitution 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 "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 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 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 an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

Vote:  $\frac{3}{5}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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

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(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle and that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e) The New Motor Vehicle Board may adopt regulations to implement this section.

9889.76. This chapter shall become operative on January 1, 1988.

SEC. 2. 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 warranty or designate and authorize in this state as service or 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 this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. Warranty service contracts may provide for a

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, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

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

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

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

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

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

(C) When the manufacturer replaces the new motor  
 vehicle pursuant to subparagraph (A), the buyer shall  
 only be liable to pay the manufacturer an amount directly  
 attributable to use by the buyer of the replaced vehicle  
 prior to the time the buyer first delivered the vehicle to  
 the manufacturer or distributor, or its authorized service  
 and repair facility for correction of the problem that gave  
 rise to the nonconformity. When restitution is made  
 pursuant to subparagraph (B), the amount to be paid by  
 the manufacturer to the buyer may be reduced by the  
 manufacturer by that amount directly attributable to use  
 by the buyer prior to the time the buyer first delivered  
 the vehicle to the manufacturer or distributor, or its  
 authorized service and repair facility for correction of the  
 problem that gave rise to the nonconformity. The  
 amount directly attributable to use by the buyer shall be  
 determined by multiplying the actual price of the new



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

11 (e) (1) It shall be presumed that a reasonable number  
 12 of attempts have been made to conform a new motor  
 13 vehicle to the applicable express warranties if, within  
 14 one year from delivery to the buyer or 12,000 miles on  
 15 the odometer of the vehicle, whichever occurs first, either

16 (A) the same nonconformity has been subject to repair  
 17 four or more times by the manufacturer or its agents,  
 18 the buyer has at least once directly notified the  
 19 manufacturer of the need for the repair of the  
 20 nonconformity, or (B) the vehicle is out of service  
 21 for a cumulative total of more than 30 calendar  
 22 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  
 25 the 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  
 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  
 35 by the buyer in any civil action, including an action in  
 36 small 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

39 writing of the availability of a third party process with a  
 40 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 after the decision is  
 accepted by the buyer, 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 if the decision  
 is accepted by the buyer, whichever occurs later.

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

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

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

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

(D) Provides arbitrators who are assigned to decide  
 disputes with copies of, and instruction in, the provisions

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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 Code, and this chapter.

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

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

16 (G) Renders decisions which consider and provide  
17 rights and remedies conferred in regulations of the  
18 Federal Trade Commission contained in Part 703 of Title  
19 16 of the Code of Federal Regulations as those regulations  
20 read on January 1, 1987, Division 2 (commencing with  
21 Section 2101) of the Commercial Code, and this chapter.  
22 Nothing in this chapter requires that, to be certified as a  
23 qualified third party dispute resolution process pursuant  
24 to this section, decisions of the process must consider  
25 damages or multiple damages, under subdivision (c)  
26 of Section 1794, or of attorney's fees under subdivision  
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) Requires that no arbitrator deciding a dispute  
32 may be a party to the dispute, or an employee, agent,  
33 dealer for the manufacturer; and that no other person  
34 including an employee, agent, or dealer for the  
35 manufacturer, may be allowed to participate in formal  
36 informal discussions with the arbitrator unless the buyer  
37 is allowed to participate equally.

38 (I) Requires that in the case of an order for one further  
39  
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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  
2 period of one year that the motor vehicle is free of the  
3 nonconformity.

4 SEC. 3. Section 1793.25 is added to the Civil Code  
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 the  
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,  
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, 6904  
32 and 6908 thereof, insofar as those provisions are  
33 inconsistent with this section.

34 SEC. 4. Section 1794 of the Civil Code is amended  
35 read:

36 1794. (a) Any buyer of consumer goods who  
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

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1 buyer shall recover damages, reasonable attorney's  
2 and costs, and a civil penalty of up to two times  
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  
31 be transferred in the following manner:

32 (a) (1) All revenues, less refunds, derived under this  
33 part at the 4 1/4 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

State Board of Equalization, with the concurrence of the  
Department of Finance shall be transferred during each  
fiscal year to the Transportation Planning and  
Development Account in the State Transportation Fund  
for appropriation pursuant to Section 99312 of the Public  
Utilities Code.

(2) If the amount transferred pursuant to paragraph  
(1) is less than one hundred ten million dollars  
(\$110,000,000) in any fiscal year, an additional amount  
equal to the difference between one hundred ten million  
dollars (\$110,000,000) and the amount so transferred shall  
be transferred, to the extent funds are available, as  
follows:

(A) For the 1986-87 fiscal year, from the General  
Fund.

(B) For the 1987-88 and each subsequent fiscal year,  
from the state revenues due to the imposition of sales and  
use taxes on fuel, as defined for purposes of the Use Fuel  
Tax Law (Part 3 (commencing with Section 8601)).

(b) The balance shall be transferred to the General  
Fund.

(c) The estimate required by subdivision (a) shall be  
based on taxable transactions occurring during a calendar  
year, and the transfers required by subdivision (a) shall  
be made during the fiscal year that commences during  
that same calendar year. Transfers required by  
paragraphs (1) and (2) of subdivision (a) shall be made  
quarterly.

SEC. 6. Section 3050 of the Vehicle Code is amended  
to read:

3050. The board shall do all of the following:

(a) Adopt rules and regulations in accordance with  
Chapter 3.5 (commencing with Section 11340) of Part 1  
of Division 3 of Title 2 of the Government Code  
governing such matters as are specifically committed to  
its jurisdiction.

(b) Hear and consider, within the limitations and in  
accordance with the procedure provided, an appeal  
presented by an applicant for, or holder of, a license as a  
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  
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,  
9 representative pursuant to Chapter 4 (commencing with  
10 Section 11700) of Division 5 submitted by any person  
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 more of the  
17 combination of the following:

18 (1) Direct the department to conduct investigation of  
19 matters that the board deems reasonable, and make  
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  
36 accordance with the procedure provided, a protest  
37 presented by a franchisee pursuant to Section 3060, 3064,  
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).

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SENATE COMMITTEE ON JUDICIARY  
Bill Lockyer, Chairman  
1987-88 Regular Session

AB 2057 (Tanner)  
As amended August 17  
Hearing date: August 18, 1987  
Various Codes  
TDT

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NEW MOTOR VEHICLE WARRANTIES

HISTORY

Source: Author

Prior Legislation: AB 3611 (1986) - Held in Senate  
Appropriations Committee  
AB 1787 (1982) - Chaptered

Support: California Public Interest Research Group (CALPIRG);  
Consumers' Union; Motor Voters; Attorney General

Opposition: Ford Motor Co; General Motors Corp; Chrysler Motors;  
Automobile Importers of America

Assembly Floor Vote: Ayes 54 - Noes 20

KEY ISSUES

SHOULD THE VEHICLE MANUFACTURERS' VOLUNTARY DISPUTE RESOLUTION  
PROCEDURES BE REPLACED BY A STATE CERTIFIED DISPUTE RESOLUTION  
PROCESS?

SHOULD A VEHICLE MANUFACTURER BE LIABLE TO A BUYER FOR TREBLE  
DAMAGES AND ATTORNEY'S FEES?

PURPOSE

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.

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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 lesser to a manufacturer for a nonconformity, except as specified.

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 and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

Existing law authorizes the award of court costs and attorney's fees to consumer who prevail in such actions, and would also require the award of civil penalties, including treble damages, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

The purpose of this bill is to improve protections for vehicle purchasers under the existing lemon law.

#### COMMENT

##### 1. Existing lemon law

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the lemon law. Specifically, it:

-Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or, more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

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-Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.

-Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.

This bill would amend and clarify the lemon law. It would establish a structure for certifying third-party dispute mechanisms, requirements for certification and provide for treble damages and attorney's fees to consumers who obtain a judgement against a manufacturer who does not have a certified lemon law arbitration program.

2. Need for legislation

The purpose of this bill, according to the author, is to strengthen the existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The author and proponents state that since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; and unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

3. Provisions of the bill

This bill would:

- a) Require the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection

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warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs; and, submit a biennial report to the Legislature evaluating the effectiveness of the program.

- b) Authorize BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV), beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 (one dollar) for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- c) Require motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer were unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- d) Specify what would be included in the replacement and refund option.

-In case of replacement, the new motor vehicle would be accompanied by all express and implied warranties. The manufacturer would pay for, or to, the buyer the amount of any sales or use tax, license and registration fees, and other official fees which the buyer would be obligated to pay in connection with the replacement, plus any incidental damages the buyer would be entitled to including reasonable repair, towing, and rental car costs.

-In case of restitution, the manufacturer would pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees, and registration fees plus incidental damages. The amount directly attributable to use by the buyer would be determined as prescribed and could be subtracted from the total owed to the buyer.

- e) Clarify that the vehicle buyer could assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.

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- f) Set forth a qualified third party dispute resolution process and require compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.
- g) Amend the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- h) Prevent a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems were disclosed, the problems were corrected, and the manufacturer warranted that the vehicle is free of those problems for one year.
- i) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provided the specified refund to the buyer.
- j) Provide for awards of treble damages and reasonable attorney's fees and costs if the buyer were awarded a judgement and the manufacturer did not maintain a qualified third party dispute resolution process as established by this chapter, with specified exceptions.

4. Opposition

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration process is small relative to the number of arbitrations. They do not object to most of the provisions which update the lemon law, however, they strenuously object to the provisions for treble damages and an award of attorney's fees to consumers. They feel this creates an improper incentive for consumers to hire an attorney to go to court over procedural issues. They feel treble damages, usually associated with gross and willful wrongdoing, would set a dangerous precedent by making consumers eligible for a financial windfall.

a. General Motors

GM opposes the provisions of this bill because it would formalize the manufacturers' heretofore voluntary arbitration procedures to such an extent that the arbitrator would need to be trained in the specifics of the lemon law. They contend the bill would make them

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liable unreasonably for treble damages and the buyer's attorney's fees if a layman arbitrator untrained in the law, misapplied the lemon law. GM has approximately 1,000 arbitrators in California, only 250 of whom are attorneys.

b. Automobile Importers of America

AIA which includes most European and Asian vehicle manufacturers selling cars in California, opposes the state certification, treble damages and attorneys' fee award provisions of the bill. They viewed the certification provisions as creating a new bureaucratic process for the manufacturers' voluntary lemon law programs.

AIA feels the creation of a certification process and imposition of treble damages and attorneys' fees against manufacturers who fail to establish or maintain a certified program, if a consumer wins in court, would be unwarranted and unconstitutional.

In general, opponents of the bill argue that the intent of arbitration programs such as GM's, which predates the lemon law, is that they be voluntary, informal, nonlegal, and easily understood by the consumer procedurally.

5. Amended requirements for an award of civil penalties

Under the bill as recently amended, if the buyer established that the manufacturer failed to replace a vehicle or make restitution after unsuccessful attempts to repair the vehicle, the buyer would be entitled to recover actual damages, reasonable attorney's fees and costs and a civil penalty of up to two times the actual damages.

The bill in its current form would give the court discretion to award less than treble damages where appropriate. The civil penalty would not be allowed, however, if:

- (1) the manufacturer maintained a qualified dispute resolution process or
- (2) the buyer failed to serve written notice on the manufacturer requesting compliance with the statutory requirement of replacement or restitution or

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- (3) the buyer served such notice and the manufacturer complied with the request within 30 days of the notice.

The major features of the amended treble damage provisions are first, the creation of a threshold for the award of such penalties. That is, the manufacturer must fail to satisfactorily repair or make a substitution or restitution. Second, by making the award of treble damages discretionary, the court may decline to award treble damages if a violation were not substantial or if for any reason the court deemed such an award unwarranted.

Third, the court could award a penalty in excess of actual damages in any amount which did not exceed two times the actual damages.

Finally, unlike an earlier version of the bill, the amended bill would not absolutely require an award of treble damages merely because the manufacturer did not have a qualified dispute resolution process. Such a manufacturer who made restitution or gave a replacement would not be subject to treble damages. A manufacturer who did not do either of those alternatives however would be subject to a maximum of treble damages at the court's discretion.

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**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
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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

An act to add Chapter 20.5 (commencing with Section 1789.70) 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

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that such a process is available.

This bill would revise the provisions relating to warranty on new motor vehicles to require the manufacturer's representative to replace the vehicle or make restitution 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 "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 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 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:

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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

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1 with respect to the same motor vehicle.  
 2 (c) On or before January 1 of each calendar year,  
 3 bureau shall determine the dollar amount, not to exceed  
 4 one dollar (\$1) per motor vehicle, which shall  
 5 be collected and received by the Department of Motor  
 6 Vehicles beginning July 1 of that year, based upon  
 7 estimate of the number of sales, leases, and other  
 8 dispositions of motor vehicles in this state during  
 9 preceding calendar year, in order to fully fund the  
 10 program established by this chapter during the following  
 11 fiscal year. The bureau shall notify the New Motor  
 12 Vehicle Board of the dollar amount per motor vehicle  
 13 that the New Motor Vehicle Board shall use in calculating  
 14 the amounts of the fees to be collected from applicants  
 15 pursuant to this subdivision.

16 (d) For the purposes of this section, "motor vehicle"  
 17 means a new passenger or commercial motor vehicle  
 18 a kind that is required to be registered under the Vehicle  
 19 Code, but the term does not include a motorcycle,  
 20 motor home, or any vehicle whose gross weight exceeds  
 21 10,000 pounds.

22 (e) The New Motor Vehicle Board may adopt  
 23 regulations to implement this section.

24 9889.76. This chapter shall become operative on January  
 25 1, 1988.

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 warranty,  
 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,  
 39 a manufacturer may enter into warranty service contracts  
 40 with independent service and repair facilities.

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

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1 of attachment, or method of installation, or nature of  
 2 nonconformity, delivery cannot reasonably  
 3 accomplished. If the buyer cannot return  
 4 nonconforming goods for any of these reasons, he or  
 5 shall notify the manufacturer or its nearest service  
 6 repair facility within the state. Written notice  
 7 nonconformity to the manufacturer or its service  
 8 repair facility shall constitute return of the goods  
 9 purposes of this section. Upon receipt of such notice  
 10 nonconformity the manufacturer shall, at its option,  
 11 service or repair the goods at the buyer's residence,  
 12 pick up the goods for service and repair, or arrange  
 13 transporting the goods to its service and repair facility.  
 14 All reasonable costs of transporting the goods when  
 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 the  
 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  
 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.

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

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

(C) When the manufacturer replaces the new motor  
 vehicle pursuant to subparagraph (A), the buyer shall  
 only be liable to pay the manufacturer an amount directly  
 attributable to use by the buyer of the replaced vehicle  
 prior to the time the buyer first delivered the vehicle to  
 the manufacturer or distributor, or its authorized service  
 and repair facility for correction of the problem that gave  
 rise to the nonconformity. When restitution is made  
 pursuant to subparagraph (B), the amount to be paid by  
 the manufacturer to the buyer may be reduced by the  
 manufacturer by that amount directly attributable to use  
 by the buyer prior to the time the buyer first delivered  
 the vehicle to the manufacturer or distributor, or its  
 authorized service and repair facility for correction of the  
 problem that gave rise to the nonconformity. The  
 amount directly attributable to use by the buyer shall be

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

13 (e) (1) It shall be presumed that a reasonable number  
14 of attempts have been made to conform a new motor  
15 vehicle to the applicable express warranties if, within  
16 year from delivery to the buyer or 12,000 miles on the  
17 odometer of the vehicle, whichever occurs first, either

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

40 (2) If a qualified third party dispute resolution process

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

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

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

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

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

40 (D) Provides arbitrators who are assigned to decide

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1 disputes with copies of, and instruction in, the provisions  
2 of the Federal Trade Commission's regulations in  
3 703 of Title 16 of the Code of Federal Regulations as the  
4 regulations read on January 1, 1987, Division  
5 (commencing with Section 2101) of the Commercial  
6 Code, and this chapter.

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

13 (F) Provides, at the request of the arbitrator or  
14 majority of the arbitration panel, for an inspection  
15 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) Renders decisions which consider and provide for

19 (G) Takes into account, in rendering decisions,  
20 legal and equitable factors, including, but not limited to,  
21 the written warranty, the rights and remedies conferred

22 in regulations of the Federal Trade Commission  
23 contained in Part 703 of Title 16 of the Code of Federal  
24 Regulations as those regulations read on January 1, 1987,  
25 Division 2 (commencing with Section 2101) of the  
26 Commercial Code, and this chapter, and all  
27 other equitable considerations appropriate in the  
28 circumstances. Nothing in this chapter requires that

29 be certified as a qualified third party dispute resolution  
30 process pursuant to this section, decisions of the process  
31 must consider or provide remedies in the form of award  
32 of punitive damages or multiple damages, under  
33 subdivision (c) of Section 1794, or of attorney's fees under  
34 subdivision (d) of Section 1794, or of consequential  
35 damages other than as provided in subdivisions (a)  
36 (b) of Section 1794, including, but not limited to,  
37 reasonable repair, towing and rental car costs actually  
38 incurred by the buyer.

39 (H) Requires that no arbitrator deciding a dispute  
40 may be a party to the dispute; or an employee, agent,

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

(I) Requires that in the case of an order for one further  
repair attempt, a hearing date shall be established no  
later than 30 days after the repair attempt has been made,  
to determine whether the manufacturer has corrected  
the nonconformity. The buyer and the manufacturer  
shall schedule an opportunity for the manufacturer to  
effect the ordered repair no later than 30 days after the  
order for the repair is served on the manufacturer and  
the buyer. If, at the hearing, it is determined that the  
manufacturer did not correct the nonconformity, the  
manufacturer shall be ordered to either replace the  
motor vehicle, if the buyer consents to this remedy, or  
to make restitution.

(J)  
(I) Obtains and maintains certification by the Bureau  
of Automotive Repair pursuant to Chapter 20.5  
(commencing with Section 9889.70) of Division 3 of the  
Business and Professions Code.

(4) For the purposes of subdivision (d) and 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 to the buyer or lessee.

(B) "New motor vehicle" means a new motor vehicle  
which is used or bought for use primarily for personal,  
family, or household purposes. "New motor vehicle"  
includes a dealer-owned vehicle and a "demonstrator" or  
other motor vehicle sold with a manufacturer's new car  
warranty but does not include a motorcycle, a  
motorhome, or a motor vehicle which is not registered  
under the Vehicle Code because it is to be operated or



1 used exclusively off the highways. A "demonstrator  
2 vehicle assigned by a dealer for the purpose  
3 demonstrating qualities and characteristics common  
4 vehicles of the same or similar model and type.

5 (5) No person shall sell or lease a motor vehicle  
6 transferred by a buyer or lessee to a manufacturer as a  
7 result of a nonconformity pursuant to paragraph (d) of  
8 subdivision (d) unless the nature of the nonconformity  
9 experienced by the original buyer or lessee is clearly  
10 conspicuously disclosed, the nonconformity is corrected  
11 and the manufacturer warrants to the new buyer or  
12 lessee in writing for a period of one year that the motor  
13 vehicle is free of that nonconformity.

14 SEC. 3. Section 1793.25 is added to the Civil Code  
15 read:

16 1793.25. (a) Notwithstanding Part 1 (commencing  
17 with Section 6001) of Division 2 of the Revenue and  
18 Taxation Code, the State Board of Equalization shall  
19 reimburse the manufacturer of a new motor vehicle  
20 an amount equal to the sales tax which the manufacturer  
21 includes in making restitution to the buyer pursuant to  
22 subparagraph (B) of paragraph (2) of subdivision (d) of  
23 Section 1793.2, when satisfactory proof is provided that  
24 the retailer of the motor vehicle for which the  
25 manufacturer is making restitution has reported and paid  
26 the sales tax on the gross receipts from the sale of the  
27 motor vehicle. The State Board of Equalization shall  
28 adopt rules and regulations to carry out, facilitate  
29 compliance with, or prevent circumvention or evasion of  
30 this section.

31 (b) Nothing in this section shall in any way change  
32 application of the sales and use tax to the gross receipts  
33 and the sales price from the sale, and the storage, use,  
34 other consumption, in this state or tangible personal  
35 property pursuant to Part 1 (commencing with Section  
36 6001) of Division 2 of the Revenue and Taxation Code.

37 (c) The manufacturer's claim for reimbursement shall  
38 the board's approval or denial of the claim shall be subject  
39 to the provisions of Article 1 (commencing with Section  
40 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue

1 and Taxation Code, except Sections 6902.1, 6903, 6907,  
2 and 6908 thereof, insofar as those provisions are not  
3 inconsistent with this section.

4 SEC. 4. Section 1794 of the Civil Code is amended to  
5 read:

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

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

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

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

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

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

37 (e) (1) Except as otherwise provided in this  
38 subdivision, if the buyer establishes a violation of  
39 paragraph (2) of subdivision (d) of Section 1793.2, the  
40 buyer shall recover damages; and reasonable attorney's

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1 fees and costs, and *may recover* a civil penalty of up to  
2 two times the amount of damages.

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

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

16 (4) If the buyer serves the notice described in  
17 paragraph (3) and the manufacturer complies with  
18 paragraph (2) of subdivision (d) of Section 1793.2 within  
19 30 days of the service of that notice, the manufacturer  
20 shall not be liable for a civil penalty pursuant to this  
21 subdivision.

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

25 SEC. 5. Section 7102 of the Revenue and Taxation  
26 Code is amended to read:

27 7102. The money in the fund shall, upon order of the  
28 Controller, be drawn therefrom for refunds under the  
29 part, and pursuant to Section 1793.25 of the Civil Code,  
30 be transferred in the following manner:

31 (a) (1) All revenues, less refunds, derived under the  
32 part at the 4% percent rate, including the imposition of  
33 sales and use taxes with respect to the sale, storage, use,  
34 or other consumption of motor vehicle fuel which would  
35 not have been received if the sales and use tax rate had  
36 been 5 percent and if motor vehicle fuel, as defined for  
37 purposes of the Motor Vehicle Fuel License Tax  
38 (Part 2 (commencing with Section 7301)), had been  
39 exempt from sales and use taxes, shall be estimated by the  
40 State Board of Equalization, with the concurrence of the

Department of Finance shall be transferred during each  
fiscal year to the Transportation Planning and  
Development Account in the State Transportation Fund  
for appropriation pursuant to Section 99312 of the Public  
Utilities Code.

(2) If the amount transferred pursuant to paragraph  
(1) is less than one hundred ten million dollars  
(\$110,000,000) in any fiscal year, an additional amount  
equal to the difference between one hundred ten million  
dollars (\$110,000,000) and the amount so transferred shall  
be transferred, to the extent funds are available, as  
follows:

(A) For the 1986-87 fiscal year, from the General  
Fund.

(B) For the 1987-88 and each subsequent fiscal year,  
from the state revenues due to the imposition of sales and  
use taxes on fuel, as defined for purposes of the Use Fuel  
Tax Law (Part 3 (commencing with Section 8601)).

(b) The balance shall be transferred to the General  
Fund.

(c) The estimate required by subdivision (a) shall be  
based on taxable transactions occurring during a calendar  
year, and the transfers required by subdivision (a) shall  
be made during the fiscal year that commences during  
that same calendar year. Transfers required by  
paragraphs (1) and (2) of subdivision (a) shall be made  
quarterly.

SEC. 6. Section 3050 of the Vehicle Code is amended  
to read:

3050. The board shall do all of the following:

(a) Adopt rules and regulations in accordance with  
Chapter 3.5 (commencing with Section 11340) of Part 1  
of Division 3 of Title 2 of the Government Code  
governing such matters as are specifically committed to  
its jurisdiction.

(b) Hear and consider, within the limitations and in  
accordance with the procedure provided, an appeal  
presented by an applicant for, or holder of, a license as a  
new motor vehicle dealer, manufacturer, manufacturer  
branch, distributor, distributor branch, or representative



1 when the applicant or licensee submits an appeal  
2 provided for in this chapter from a decision arising out  
3 the department.

4 (c) Consider any matter concerning the activities  
5 practices of any person applying for or holding a license  
6 as a new motor vehicle dealer, manufacturer,  
7 manufacturer branch, distributor, distributor branch,  
8 representative pursuant to Chapter 4 (commencing with  
9 Section 11700) of Division 5 submitted by any person  
10 member of the board who is a new motor vehicle dealer  
11 may not participate in, hear, comment, advise other  
12 members upon, or decide any matter considered by the  
13 board pursuant to this subdivision that involves a dispute  
14 between a franchisee and franchisor. After such  
15 consideration, the board may do any one or any  
16 combination of the following:

17 (1) Direct the department to conduct investigation  
18 matters that the board deems reasonable, and make  
19 written report on the results of the investigation to the  
20 board within the time specified by the board.

21 (2) Undertake to mediate, arbitrate, or otherwise  
22 resolve any honest difference of opinion or viewpoint  
23 existing between any member of the public and any new  
24 motor vehicle dealer, manufacturer, manufacturer  
25 branch, distributor branch, or representative.

26 (3) Order the department to exercise any and  
27 authority or power that the department may have with  
28 respect to the issuance, renewal, refusal to renew,  
29 suspension, or revocation of the license of any new motor  
30 vehicle dealer, manufacturer, manufacturer branch,  
31 distributor, distributor branch, or representative as such  
32 license is required under Chapter 4 (commencing with  
33 Section 11700) of Division 5.

34 (d) Hear and consider, within the limitations and  
35 accordance with the procedure provided, a protest  
36 presented by a franchisee pursuant to Section 3060, 3061,  
37 3064, or 3065. A member of the board who is a new motor  
38 vehicle dealer may not participate in, hear, comment,  
39 advise other members upon, or decide, any matter  
40 involving a protest filed pursuant to Article

11 (commencing with Section 3060).

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AMENDED IN SENATE SEPTEMBER 4, 1987

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

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

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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 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 an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill thereby making an appropriation.

(3) The bill would appropriate \$25,334 from the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for reimbursement to the Department of

of Motor Vehicles for expenses incurred in carrying out the provisions of the act, and would provide for the repayment of that amount, as specified.

(4) This bill would incorporate additional changes in Section 7102 of the Revenue and Taxation Code, proposed by AB 276, to be operative only if AB 276 and this bill are both chaptered and become effective January 1, 1987, and this bill is chaptered last.

Vote: 3/4. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

#### CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for

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1. Department of Motor Vehicles, for each issuance or renewal of the license, an amount prescribed by the Motor Vehicle Board, but not to exceed one dollar for each motor vehicle sold, leased, or distributed by the applicant in this state during the preceding calendar year. The total fee paid by each licensee shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more licensees pursuant to this subdivision with respect to the same motor vehicle.

(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon the estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e) The New Motor Vehicle Board may adopt regulations to implement this section.

9889.76. This chapter shall become operative on January 1, 1988.

SEC. 2. 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 this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by 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, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

(b) Where 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

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1 shall be serviced or repaired so as to conform to the  
2 applicable warranties within 30 days. Delay caused by  
3 conditions beyond the control of the manufacturer or  
4 representatives shall serve to extend this 30-day  
5 requirement. Where delay arises, conforming goods shall  
6 be tendered as soon as possible following termination of  
7 the condition giving rise to the delay.

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

30 (d) (1) Except as provided in paragraph (2), if the  
31 manufacturer or its representative in this state does not  
32 service or repair the goods to conform to the applicable  
33 express warranties after a reasonable number of  
34 attempts, the manufacturer shall either replace the goods  
35 or reimburse the buyer in an amount equal to the  
36 purchase price paid by the buyer, less that amount  
37 directly attributable to use by the buyer prior to the  
38 discovery of the nonconformity.

39 (2) If the manufacturer or its representative in this  
40 state is unable to service or repair a new motor vehicle

1 as that term is defined in subparagraph (B) of paragraph  
2 (4) of subdivision (e), to conform to the applicable  
3 express warranties after a reasonable number of  
4 attempts, the manufacturer shall either promptly replace  
5 the new motor vehicle in accordance with subparagraph  
6 (A) or promptly make restitution to the buyer in  
7 accordance with subparagraph (B). However, the buyer  
8 shall be free to elect restitution in lieu of replacement,  
9 and in no event shall the buyer be required by the  
10 manufacturer to accept a replacement vehicle.

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

24 (B) In the case of restitution, the manufacturer shall  
25 make restitution in an amount equal to the actual price  
26 paid or payable by the buyer, including any charges for  
27 transportation and manufacturer-installed options, but  
28 excluding nonmanufacturer items installed by a dealer or  
29 the buyer, and including any collateral charges such as  
30 sales tax, license fees, registration fees, and other official  
31 fees, plus any incidental damages to which the buyer is  
32 entitled under Section 1794, including, but not limited to,  
33 reasonable repair, towing, and rental car costs actually  
34 incurred by the buyer.

35 (C) When the manufacturer replaces the new motor  
36 vehicle pursuant to subparagraph (A), the buyer shall  
37 only be liable to pay the manufacturer an amount directly  
38 attributable to use by the buyer of the replaced vehicle  
39 prior to the time the buyer first delivered the vehicle to  
40 the manufacturer or distributor, or its authorized service

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

22 (e) (1) It shall be presumed that a reasonable number  
 23 of attempts have been made to conform a new motor vehicle  
 24 to the applicable express warranties if, within one year  
 25 from delivery to the buyer or 12,000 miles on the  
 26 odometer of the vehicle, whichever occurs first, either  
 27 (A) the same nonconformity has been subject to repair  
 28 four or more times by the manufacturer or its agents, or  
 29 the buyer has at least once directly notified the  
 30 manufacturer of the need for the repair of the nonconformity,  
 31 or (B) the vehicle is out of service for a cumulative total  
 32 of more than 30 calendar days since delivery of the vehicle to  
 33 the buyer. The 30-day limit shall be extended only if repairs  
 34 cannot be performed due to conditions beyond the control of the  
 35 manufacturer or its agents. The buyer shall be required to  
 36 directly notify the manufacturer pursuant to subparagraph (A)  
 37 only if the manufacturer has clearly and conspicuously disclosed  
 38 to the buyer, with the warranty or the owner's manual, the provisions  
 39 of this subdivision and that of subdivision (d), including the  
 40 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, and it may be asserted by  
 the buyer in any civil action, including an action in small claims  
 court, or other formal or informal proceeding.

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

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

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

39 (A) Complies with the minimum requirements of the  
 40 Federal Trade Commission for informal dispute

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1 settlement procedures as set forth in Part 703 of Title  
2 of the Code of Federal Regulations, as those regulations  
3 read on January 1, 1987.

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

6 (C) Prescribes a reasonable time, not to exceed  
7 days after the decision is accepted by the buyer,  
8 which the manufacturer or its agent must fulfill the  
9 of its decisions.

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

17 (E) Requires the manufacturer, when the proper  
18 orders, under the terms of this chapter, either that  
19 nonconforming motor vehicle be replaced if the buyer  
20 consents to this remedy or that restitution be made to  
21 buyer, to replace the motor vehicle or make restitution  
22 in accordance with paragraph (2) of subdivision (d).

23 (F) Provides, at the request of the arbitrator,  
24 majority of the arbitration panel, for an inspection  
25 written report on the condition of a nonconforming  
26 motor vehicle, at no cost to the buyer, by an automotive  
27 expert who is independent of the manufacturer.

28 (G) Takes into account, in rendering decision,  
29 legal and equitable factors, including, but not limited to,  
30 the written warranty, the rights and remedies conferred  
31 in regulations of the Federal Trade Commission  
32 contained in Part 703 of Title 16 of the Code of Federal  
33 Regulations as those regulations read on January 1, 1987,  
34 Division 2 (commencing with Section 2101) of the  
35 Commercial Code, this chapter, and any other equitable  
36 considerations appropriate in the circumstances. Notwithstanding  
37 in this chapter requires that, to be certified as a qualified  
38 third party dispute resolution process pursuant to  
39 section, decisions of the process must consider or provide  
40 remedies in the form of awards of punitive damages

1 multiple damages, under subdivision (c) of Section 1794,  
2 or of attorney's fees under subdivision (d) of Section 1794,  
3 or of consequential damages other than as provided in  
4 subdivisions (a) and (b) of Section 1794, including, but  
5 not limited to, reasonable repair, towing and rental car  
6 costs actually incurred by the buyer.

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

15 (I) Obtains and maintains certification by the Bureau  
16 of Automotive Repair pursuant to Chapter 20.5  
17 (commencing with Section 9889.70) of Division 3 of the  
18 Business and Professions Code.

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

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

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

37 (5) No person shall sell or lease a motor vehicle  
38 transferred by a buyer or lessee to a manufacturer  
39 pursuant to paragraph (2) of subdivision (d) unless the  
40 nature of the nonconformity experienced by the original



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1 pursuant to this subdivision.  
 2 (3) After the occurrence of the events giving rise  
 3 the presumption established in paragraph (1)  
 4 subdivision (e) of Section 1793.2, the buyer may serve  
 5 upon the manufacturer a written notice requesting  
 6 the manufacturer comply with paragraph (2)  
 7 subdivision (d) of Section 1793.2. If the buyer fails to  
 8 serve the notice, the manufacturer shall not be liable  
 9 a civil penalty pursuant to this subdivision.  
 10 (4) If the buyer serves the notice described in  
 11 paragraph (3) and the manufacturer complies with  
 12 paragraph (2) of subdivision (d) of Section 1793.2 within  
 13 30 days of the service of that notice, the manufacturer  
 14 shall not be liable for a civil penalty pursuant to this  
 15 subdivision.  
 16 (5) If the buyer recovers a civil penalty under  
 17 subdivision (c), the buyer may not also recover a civil  
 18 penalty under this subdivision for the same violation.  
 19 SEC. 5. Section 7102 of the Revenue and Taxation  
 20 Code is amended to read:  
 21 7102. The money in the fund shall, upon order of the  
 22 Controller, be drawn therefrom for refunds under this  
 23 part, and pursuant to Section 1793.25 of the Civil Code,  
 24 be transferred in the following manner:  
 25 (a) (1) All revenues, less refunds, derived under this  
 26 part at the 4% percent rate, including the imposition of  
 27 sales and use taxes with respect to the sale, storage, use,  
 28 or other consumption of motor vehicle fuel which would  
 29 not have been received if the sales and use tax rate had  
 30 been 5 percent and if motor vehicle fuel, as defined for  
 31 purposes of the Motor Vehicle Fuel License Tax Law  
 32 (Part 2 (commencing with Section 7301)), had been  
 33 exempt from sales and use taxes, shall be estimated by the  
 34 State Board of Equalization, with the concurrence of the  
 35 Department of Finance shall be transferred during each  
 36 fiscal year to the Transportation Planning and  
 37 Development Account in the State Transportation Fund  
 38 for appropriation pursuant to Section 99312 of the Public  
 39 Utilities Code.  
 40 (2) If the amount transferred pursuant to paragraph

1 (1) is less than one hundred ten million dollars  
 2 (\$110,000,000) in any fiscal year, an additional amount  
 3 equal to the difference between one hundred ten million  
 4 dollars (\$110,000,000) and the amount so transferred shall  
 5 be transferred, to the extent funds are available, as  
 6 follows:  
 7 (A) For the 1986-87 fiscal year, from the General  
 8 Fund.  
 9 (B) For the 1987-88 and each subsequent fiscal year,  
 10 from the state revenues due to the imposition of sales and  
 11 use taxes on fuel, as defined for purposes of the Use Fuel  
 12 Tax Law (Part 3 (commencing with Section 8601)).  
 13 (b) The balance shall be transferred to the General  
 14 Fund.  
 15 (c) The estimate required by subdivision (a) shall be  
 16 based on taxable transactions occurring during a calendar  
 17 year, and the transfers required by subdivision (a) shall  
 18 be made during the fiscal year that commences during  
 19 that same calendar year. Transfers required by  
 20 paragraphs (1) and (2) of subdivision (a) shall be made  
 21 quarterly.  
 22 SEC. 6. Section 7102 of the Revenue and Taxation  
 23 Code is amended to read:  
 24 7102. The money in the fund shall, upon order of the  
 25 Controller, be drawn therefrom for refunds under this  
 26 part, and pursuant to Section 1793.25 of the Civil Code,  
 27 or be transferred in the following manner:  
 28 (a) (1) All revenues, less refunds, derived under this  
 29 part at the 4% percent rate, including the imposition of  
 30 sales and use taxes with respect to the sale, storage, use,  
 31 or other consumption of motor vehicle fuel which would  
 32 not have been received if the sales and use tax rate had  
 33 been 5 percent and if motor vehicle fuel, as defined for  
 34 purposes of the Motor Vehicle Fuel License Tax Law  
 35 (Part 2 (commencing with Section 7301)), had been  
 36 exempt from sales and use taxes, shall be estimated by the  
 37 State Board of Equalization, with the concurrence of the  
 38 Department of Finance shall be transferred during each  
 39 fiscal year to the Transportation Planning and  
 40 Development Account in the State Transportation Fund

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

6 SEC. 3. Section 1793.25 is added to the Civil Code  
 7 read:

8 1793.25. (a) Notwithstanding Part 1 (commencing  
 9 with Section 6001) of Division 2 of the Revenue  
 10 Taxation Code, the State Board of Equalization shall  
 11 reimburse the manufacturer of a new motor vehicle  
 12 an amount equal to the sales tax which the manufacturer  
 13 includes in making restitution to the buyer pursuant to  
 14 subparagraph (B) of paragraph (2) of subdivision (d)  
 15 of Section 1793.2, when satisfactory proof is provided  
 16 the retailer of the motor vehicle for which the  
 17 manufacturer is making restitution has reported and paid  
 18 the sales tax on the gross receipts from the sale of the  
 19 motor vehicle. The State Board of Equalization shall  
 20 adopt rules and regulations to carry out, facilitate  
 21 compliance with, or prevent circumvention or evasion of  
 22 this section.

23 (b) Nothing in this section shall in any way change  
 24 application of the sales and use tax to the gross receipt  
 25 and the sales price from the sale, and the storage, use  
 26 other consumption, in this state or tangible personal  
 27 property pursuant to Part 1 (commencing with Section  
 28 6001) of Division 2 of the Revenue and Taxation Code.

29 (c) The manufacturer's claim for reimbursement shall be subject  
 30 to the board's approval or denial of the claim shall be subject  
 31 to the provisions of Article 1 (commencing with Section  
 32 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue  
 33 and Taxation Code, except Sections 6902.1, 6903, 6904,  
 34 and 6908 thereof, insofar as those provisions are  
 35 inconsistent with this section.

36 SEC. 4. Section 1794 of the Civil Code is amended  
 37 read:

38 1794. (a) Any buyer of consumer goods who is  
 39 damaged by a failure to comply with any obligation  
 40 under this chapter or under an implied or express

1 warranty or service contract may bring an action for the  
 2 recovery of damages and other legal and equitable relief.

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

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

11 (2) Where the buyer has accepted the goods, Sections  
 12 2714 and 2715 of the Commercial Code shall apply, and  
 13 the measure of damages shall include the cost of repairs  
 14 necessary to make the goods conform.

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

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

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

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

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1 respect to the issuance, renewal, refusal to re-  
 2 suspension, or revocation of the license of any new m-  
 3 vehicle dealer, manufacturer, manufacturer bran-  
 4 distributor, distributor branch, or representative as-  
 5 license is required under Chapter 4 (commencing  
 6 Section 11700) of Division 5.

7 (d) Hear and consider, within the limitations and  
 8 accordance with the procedure provided, a pro-  
 9 presented by a franchisee pursuant to Section 3060, 30  
 10 3064, or 3065. A member of the board who is a new m-  
 11 vehicle dealer may not participate in, hear, comm-  
 12 advise other members upon, or decide, any ma-  
 13 involving a protest filed pursuant to Article  
 14 (commencing with Section 3060).

15 SEC. 8. The sum of twenty-five thousand th-  
 16 hundred thirty-four dollars (\$25,334) is her-  
 17 appropriated from the funds deposited, pursuan-  
 18 Section 3016 of the Vehicle Code, in the Motor Veh-  
 19 Account in the State Transportation Fund to the  
 20 Motor Vehicle Board for the purpose of reimbursing  
 21 Department of Motor Vehicles for its expenses  
 22 implementing Section 9889.75 of the Business  
 23 Professions Code.

24 (b) The amount appropriated by subdivision (a) s-  
 25 be repaid, plus interest, from the Certification Account  
 26 the Automotive Repair Fund in the 1988-89 fiscal year  
 27 provided in subdivision (c). The interest shall be char-  
 28 at the rate earned by the Pooled Money Investm-  
 29 Account in the General Fund during the period  
 30 January 1, 1988, until the date the transfer of fi-  
 31 required by subdivision (c) takes place and shall be  
 32 for that same period of time. The Bureau of Autom-  
 33 Repair shall take into account the requirement to  
 34 the amount appropriated by subdivision (a),  
 35 interest, in determining the dollar amount per veh-  
 36 specified in subdivision (c) of Section 9889.75 of  
 37 Business and Professions Code.

38 (c) The sum of twenty-five thousand three hund-  
 39 thirty-four dollars (\$25,334), plus so much more as  
 40 be needed to pay the interest required by subdivi-

1 (b), shall be transferred from the Certification Account  
 2 in the Automotive Repair Fund to the Motor Vehicle  
 3 Account in the State Transportation Fund during the  
 4 1988-89 fiscal year. The transfer shall be in repayment of  
 5 the amount appropriated pursuant to subdivision (a),  
 6 plus interest as required by subdivision (b), and shall be  
 7 deposited in the Motor Vehicle Account to the credit of  
 8 the funds deposited in that account pursuant to Section  
 9 3016 of the Vehicle Code.

10 If the amount used by the New Motor Vehicle Board  
 11 to reimburse the Department of Motor Vehicles for its  
 12 expenses in implementing Section 9889.75 of the Business  
 13 and Professions Code is less than the amount  
 14 appropriated by subdivision (a), the unused portion of  
 15 the appropriation shall revert to the Motor Vehicle  
 16 Account and the amount transferred by this subdivision  
 17 shall be reduced to the amount actually used by the New  
 18 Motor Vehicle Board to reimburse the Department of  
 19 Motor Vehicles, plus the interest on that amount.

20 This subdivision shall become operative on July 1, 1988.

21 SEC. 9. The amendment of subdivision (b) of Section  
 22 1794 of the Civil Code made at the 1987-88 Regular  
 23 Session of the Legislature does not constitute a change in,  
 24 but is declaratory of, existing law.

25 SEC. 10. Section 6 of this bill incorporates  
 26 amendments to Section 7102 of the Revenue and  
 27 Taxation Code proposed by both this bill and AB 276. It  
 28 shall only become operative if (1) both bills are enacted  
 29 and become effective on or before January 1, 1988, (2)  
 30 each bill amends Section 7102 of the Revenue and  
 31 Taxation Code, and (3) this bill is enacted after AB 276,  
 32 in which case Section 5 of this bill shall not become  
 33 operative.

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THIRD READING

SENATE RULES COMMITTEE

Office of  
Senate Floor Analyses  
1100 J Street, Suite 120  
445-3514

Bill No. AR 2057  
Author: Tanner (D)  
Amended: 9/4/87 in Senate  
Vote Required: 2/3

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY			COMMITTEE: APPROPRIATIONS		
BILL NO.: AR 2057			BILL NO.: AR 2057		
DATE OF HEARING: 8-18-87			DATE OF HEARING: 8-31-87		
SENATORS:	AYE	NO	SENATORS:	AYE	NO
Boehlert			Alquist		
Keene			Avila		
Marks			Boatwright		
Petris			Campbell		
Presley			Deddeh		
Richardson			Dills		
Roberti			Keene		
Tanner			Lockyer		
Watson			Maddy		
Watts (VC)			Beverly (VC)		
Lockyer (Ch)			Presley (Ch)		
TOTAL:	9	0	TOTAL:	9	0

Assembly Floor Vote: 54-20, p. 2929, 6/22/87

**SUBJECT:** Warranties: new motor vehicles

**SOURCE:** Author

**DIGEST:** This bill provides that the vehicle manufacturers' voluntary dispute resolution procedures be replaced by a state certified dispute resolution process.

This bill also provides that should a vehicle manufacturer be liable to a buyer for treble damages and attorney's fees.

**ANALYSIS:** 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

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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, except as specified.

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 and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

Existing law authorizes the award of court costs and attorney's fees to consumer who prevail in such actions, and would also require the award of civil penalties, including treble damages, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill provides that \$25,334 be appropriated from deposited funds, as specified, in the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for the purpose of reimbursing the Department of Motor Vehicles.

This amount will be repaid, plus interest, from the certification account in the Automotive Repair Fund.

The purpose of this bill is to improve protections for vehicle purchasers under the existing lemon law.

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the lemon law. Specifically, it:

- Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or, more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.
- Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.
- Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.
- This bill would amend and clarify the lemon law. It would establish a structure for certifying third-party dispute mechanisms, requirements for certification and provide for treble damages and attorney's fees to consumers who obtain a judgement against a manufacturer who does not have a certified lemon law arbitration program.

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This bill would:

- a) Require the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs; and, submit a biennial report to the Legislature evaluating the effectiveness of the program.
- b) Authorize BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV), beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 (one dollar) for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- c) Require motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer were unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- d) Specify what would be included in the replacement and refund option.
  - In case of replacement, the new motor vehicle would be accompanied by all express and implied warranties. The manufacturer would pay for, or to, the buyer the amount of any sales or use tax, license and registration fees, and other official fees which the buyer would be obligated to pay in connection with the replacement, plus any incidental damages the buyer would be entitled to including reasonable repair, towing, and rental car costs.
  - In case of restitution, the manufacturer would pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees, and registration fees plus incidental damages. The amount directly attributable to use by the buyer would be determined as prescribed and could be subtracted from the total owed to the buyer.
- e) Clarify that the vehicle buyer could assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- f) Set forth a qualified third party dispute resolution process and require compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.
- g) Amend the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- h) Prevent a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems were disclosed, the problems were corrected, and the manufacturer warranted that the vehicle is free of those problems for one year.

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- i) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provided the specified refund to the buyer.
- j) Provide for awards of treble damages and reasonable attorney's fees and costs if the buyer were awarded a judgement and the manufacturer did not maintain a qualified third party dispute resolution process as established by this chapter, with specified exceptions.

The author worked with the Ford Motor Co., General Motors, and Honda, as well as Automobile Importers of America, to amend this bill to remove their opposition. These companies are now neutral.

Prior Legislation

AB 1787 (Tanner), Chapter 388, Statutes of 1982, passed the Senate 28-4.

AYES (28)—Senators Ayala, Beverly, Boatwright, Campbell, Carpenter, Davis, Dills, Ellis, Fran, Greene, Holmdahl, Johnson, Keene, Marks, Mello, Montoya, Nielsen, O'Keefe, Petris, Presley, Rains, Robbins, Roberti, Russell, Sieroty, Stiern, Vuich, and Watson.  
NOES (4)—Senators Richardson, Schmitz, Seymour, and Speraw.

FISCAL EFFECT: Appropriation: Yes    Fiscal Committee: Yes    Local: No

SUPPORT: (Verified 9/4/87)

Attorney General  
Chrysler Corp.  
Motor Voters  
California Public Interest Research Group  
Consumers Union

ARGUMENTS IN SUPPORT: The purpose of this bill, according to the author, is to strengthen the existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The author and proponents state that since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; and unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

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**ASSEMBLY FLOOR VOTE:**

**Assembly Bill No. 2057 passed by the following vote:**

**AYES—84**

Agnes	Eastin	Hughes	Roos
Arnes	Evans	Isenberg	Rovbal-Alford
Baker	Farr	Johnson	Shar
Bates	Farr	Katz	Spier
Brady	Felando	Kelley	Statham
Bryson	Floyd	Kelley	Statham
Calderon	Fry	Kelley	Statham
Campbell	Graham	Kelley	Statham
Chacon	Graham	Kelley	Statham
Clute	Hanigan	Kelley	Statham
Condit	Hansen	Kelley	Statham
Connolly	Harris	Kelley	Statham
Cortese	Hauer	Kelley	Statham
Costa	Hayden	Kelley	Statham

**NOES—28**

Allen	Ferguson	Jones	Mountjoy
Bader	Frazee	Lancaster	Nolan
Baker	Harvey	Lewis	Quackenbush
Brown, Dennis	Hill	Longshore	Wright
Chandler	Johnson	McClintock	Wyman

**Bill ordered transmitted to the Senate.**

RJG:lm 9/4/87 Senate Floor Analyses

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## CONCURRENCE IN SENATE AMENDMENTS

AB 2057 (Tanner) - As Amended: September 4, 1987

ASSEMBLY VOTE 54-20 ( June 22, 1987 ) SENATE VOTE 39-0 ( September 8, 1987 )Original Committee Reference: G. E. & CON. PRO.DIGEST

2/3 vote required.

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon law."

Specifically, the lemon law:

- 1) Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or more than 30 days out of service for service/repair of one or more major defects within the first year or 12,000 miles of use.
- 2) Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.
- 3) Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.

As passed by the Assembly, this bill amended and clarified the lemon law. It specified a structure for certifying third-party dispute mechanisms, specified requirements for certification and provided for treble damages and attorney's fees to consumers who obtain a judgment against a manufacturer who does not have a certified lemon law arbitration program. (The bill would become effective July 1, 1988.) Specifically, it:

- 1) Required the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs;

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AB 2057

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and submit a biennial report to the Legislature evaluating the effectiveness of the program.

- 2) Authorized BAR to charge fees, to be collected by the New Motor Vehicle Board (NMVB) in DMV beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- 3) Required motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer would be free to take restitution in place of a replacement vehicle.
- 4) Specified that the following is included in the replacement and refund option:
  - a) In case of replacement, the new motor vehicle must be accompanied by all express and implied warranties. The manufacturer must pay the amount of any sales or use tax, license and registration fees, or other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages the buyer is entitled to including reasonable repair, towing and rental car costs, as specified.
  - b) In case of restitution, the manufacturer must pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees and registration fees plus incidental damages. The amount directly attributable to use by the buyer must be determined as prescribed and may be subtracted from the total owed to the buyer.
- 5) Clarified that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- 6) Set forth a qualified third-party dispute resolution process which, among other things, clarified that dealer and/or manufacturer participation in the decision-making process is not acceptable unless the consumer is allowed equal participation; specified certain requirements for how arbitration boards should follow up on repair attempt decisions and required compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.

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- 7) Amended the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- 8) Prevented a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems are disclosed, the problems are corrected, and the manufacturer warrants that the vehicle is free of those problems for one year.
- 9) Required the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.
- 10) Provided for treble damages and reasonable attorney's fees and costs if the buyer is awarded a judgment and the manufacturer does not maintain a qualified third-party dispute resolution process as established by this chapter.

The Senate amendments:

- 1) Authorize rather than require the award of treble damages against certain manufacturers.
- 2) Exempt a manufacturer from liability for treble damages under specified conditions.
- 3) Prevent the consumer from collecting treble damages for violations of more than one provision of the law.
- 4) Provide that auto arbitration programs are certifiable by BAR if they are in "substantial compliance" with specified criteria.
- 5) Reduce the information which applicants for a license must provide the NMVB to the number of motor vehicles sold, leased, or otherwise distributed in California during the proceeding year and delete the phrase "any other information that the NMVB may require."
- 6) Allow an employee, agent, or dealer for the manufacturer to serve on the arbitration panel and decide a dispute as long as he or she is not a party to the dispute and clarify that if anyone (e.g., an industry expert) participates substantively in the merits of any dispute, the buyer is allowed to participate also.
- 7) Delete the requirement that if the arbitration panel decides that a further repair attempt must be made, another panel hearing date must be set no later than 30 days after the repair attempt has been made, to determine whether the manufacturer has corrected the nonconformity.

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- 8) Specify that only under the circumstance where a manufacturer has taken a car back which is determined under the definition in the law to be a "lemon" does the nature of the nonconformity experienced by the original buyer or lessee have to be conspicuously disclosed, corrected and warranted for one year.
- 9) Add the provisions of AB 1367 (Tanner) which specify that remedies to buyers with damaged goods include the right of replacement or reimbursement.
- 10) Appropriate a loan of \$25,334 to DMV from the New Motor Vehicle Board Account to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers.
- 11) Double-join the bill with AB 276 (Eaves).
- 12) Make technical and clarifying changes.

FISCAL EFFECT

According to the Legislative Analyst, this bill:

- 1) Results in up to \$158,000 in costs to the Certification Account in the Automotive Repair Fund (created by this bill) for the last half of 1987-88 and up to \$293,000 annually, thereafter, for BAR to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.
- 2) Generates up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
- 3) Results in unknown, probably minor, absorbable costs to the Board of Equalization to reimburse sales taxes to manufacturers in vehicle restitution settlements. Results in unknown revenue loss to the General Fund annually from sales tax reimbursements.

COMMENTS

- 1) The purpose of this bill is to strengthen the existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

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- 2) Since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.
- 3) The Senate amendments are the result of negotiations with affected parties. The major impact of these amendments is the removal of the mandatory award of treble damages and the addition of the concept of "substantial compliance" of an auto arbitration program to mitigate against actions based on program details.

Ann Evans  
324-2721  
9/10/87:ageconpro

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AB 2057 - FLOOR STATEMENT  
CONCURRENCE IN SENATE AMENDMENTS

AB 2057 AMENDS CALIFORNIA'S "LEMON LAW" WHICH I AUTHORED IN 1982.

AS PASSED BY THE ASSEMBLY, THE BILL CREATED A PROGRAM IN THE BUREAU OF AUTOMOTIVE REPAIR TO CERTIFY THAT MANUFACTURER-SPONSORED ARBITRATION PROGRAMS ARE RUN FAIRLY, ESTABLISHED CRITERIA THE ARBITRATION PROGRAMS WOULD HAVE TO MEET IN ORDER TO BE CERTIFIED, REQUIRED THE AUTO MANUFACTURER TO PAY A FEE FOR EACH VEHICLE SOLD IN THE STATE IN ORDER TO PAY FOR THE CERTIFICATION PROGRAM, AND PROVIDED THAT IF A MANUFACTURER FAILED TO ESTABLISH A CERTIFIED PROGRAM, THE OWNER OF A "LEMON" WOULD BE AWARDED TRIPLE DAMAGES IF THE OWNER WINS A LAWSUIT AGAINST THE MANUFACTURER.

THE SENATE AMENDMENTS:

- 1) MODIFY SEVERAL OF THE CRITERIA AN ARBITRATION PROGRAM MUST MEET IN ORDER TO BE CERTIFIED.
- 2) DELETE THE PROVISION OF THE BILL THAT MAKES IT MANDATORY THAT A COURT AWARD A "LEMON" CAR OWNER TRIPLE DAMAGES IF THE OWNER WINS A LAWSUIT AGAINST THE MANUFACTURER AND THE MANUFACTURER DOES NOT PROVIDE A CERTIFIED ARBITRATION PROGRAM. INSTEAD, THE BILL NOW ALLOWS THE COURT COMPLETE DISCRETION AS TO WHETHER MORE THAN ACTUAL DAMAGES SHOULD BE AWARDED AND EVEN THEN ONLY UNDER SPECIFIED CONDITIONS (THE SPECIFIED CONDITIONS ARE THAT (A) THE MANUFACTURER DOES NOT OFFER A CERTIFIED ARBITRATION PROGRAM OR (B) THE MANUFACTURER HAS REFUSED THE OPPORTUNITY TO REPLACE THE "LEMON" OR GIVE THE OWNER OF THE "LEMON" A REFUND.)
- 3) MAKE A \$25,000 APPROPRIATION AS STARTUP COSTS TO IMPLEMENT THE FEE COLLECTION SYSTEM THAT WILL FUND THE CERTIFICATION PROGRAM.
- 4) DOUBLE-JOIN THE BILL TO AB 276 (EAVES).

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THE SENATE AMENDMENTS REMOVE ALL KNOWN OPPOSITION TO THE BILL. IT IS NOW SUPPORTED BY CHRYSLER, THE ATTORNEY GENERAL AND SEVERAL CONSUMER GROUPS. FORD, GENERAL MOTORS, HONDA AND THE AUTOMOBILE IMPORTERS OF AMERICA ARE ALL NEUTRAL.

I ASK FOR CONCURRENCE IN SENATE AMENDMENTS.

SUPPORT:

CHRYSLER MOTORS  
ATTORNEY GENERAL  
CALIFORNIA PUBLIC INTEREST RESEARCH GROUP (CALPIRG)  
CONSUMERS UNION  
MOTOR VOTERS

NEUTRAL:

FORD MOTOR COMPANY  
GENERAL MOTORS CORPORATION  
HONDA MOTOR COMPANY  
AUTOMOBILE IMPORTERS OF AMERICA

OPPOSITION:

NONE KNOWN

ADMINISTRATION:

NO POSITION. THE DEPARTMENT OF FINANCE STATED THEY HAD "NO PROBLEMS WITH THE BILL" IN SENATE APPROPRIATIONS COMMITTEE.

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ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION  
REPUBLICAN ANALYSIS

Es(fa

AB 2057 (Tanner) -- LEMON LAW - PART II

Version: 9/4/87

Vice Chairman: Larry Stirling

Recommendation: Oppose

Vote: 2/3 (Appropriation)

Summary: Requires Bureau of Auto Repair to "certify" arbitration panels created by the original "Lemon Law." Requires charge on new cars to pay for process. Also allows treble damages for any consumer who sues and wins against any auto manufacturer who does not have a "certified" arbitration panel; or treble damages for any consumer who proves that his arbitration panel willfully did not follow procedures laid out in this bill. Fiscal effect: Tax of up to \$1 per new car sold in state. Estimated revenue: up to \$300,000 a year.

Supported by CA Public Interest Research Group (CALPIRG) (Sponsor); Attorney General, Chrysler. Opposed by None on File (Auto Importers of America, FORD, GM are Neutral.) Governor's position: None on file.

Comments: The author claims the present voluntary "lemon law" process is not working. Her answer is to make it better by turning it over to the government -- that paragon of efficiency and consumer protection.

Today, if you have a "lemon," you can go to the manufacturer, who then convenes an arbitration panel. If the panel rules against you, you can still go to court. If the panel rules in your favor, the car company cannot appeal.

But the author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel so she wants the government to "certify" that they are fair. (General Motors and virtually all the importers subcontract with the Better Business Bureau for arbitration.)

This bill will put the state in the business of "certifying" the procedures -- and new car buyers get to pay for this bureaucracy. The result could be the same problems we have with our legal system and our regulatory agencies -- endless litigation, lots of government employees and huge backlogs. Ironically this legislation comes at a time when the courts and the regulatory agencies are turning to voluntary arbitration to alleviate those problems.

In addition to creating a new bureaucracy, this bill also allows unsatisfied customers -- in certain circumstances -- to sue and collect triple damages (and attorney's fees). This is the section the auto companies originally objected to. But in the Senate, the author limited the awarding of triple damages, thus removing opposition from the auto companies. Nevertheless, the triple damage provision is onerous.

Auto company lobbyists admit that this law will cost the auto companies more money in legal and administrative expenses -- a cost that will be passed onto the consumer.

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But they are neutral because they think opposing this bill  
would be bad P.R.

Assembly Republican Floor Vote -- 6/22/87

(54-20) Ayes: Bradley, Felando, Frizzelle, Grisham,  
Hansen, Kelley, Leonard, Leslie, Statham,  
Stirling

Noes: (20) All Other Republicans

Senate Republican Floor Vote -- 9/8/87

(39-0) Ayes: All Republicans

Consultant: John Caldwell

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AB 2057 - COMMITTEE STATEMENT

AB 2057 AMENDS CALIFORNIA'S FIRST "LEMON LAW" WHICH I AUTHORED IN 1982. THAT LAW HAS BEEN IN EFFECT FOR OVER FOUR YEARS AND WE HAVE SUBSTANTIAL EXPERIENCE WITH ITS ADMINISTRATION. BECAUSE OF CONSUMER COMPLAINTS ABOUT ITS OPERATION, I INTRODUCED AB 2057 TO MAKE THE "LEMON LAW" FAIRER.

THE BILL HAS TWO MAIN GOALS:

- FIRST, IT WILL MAKE SURE THAT OWNERS OF "LEMON" CARS WILL RECEIVE FULL REFUNDS.
- SECOND, IT ESTABLISHES PROCEDURES TO ENSURE THAT ARBITRATION PROGRAMS THAT REVIEW "LEMON" CASES ARE RUN FAIRLY.

BRIEFLY, AB 2057 DOES THE FOLLOWING:

- PROVIDES THAT A CAR OWNER MAY CHOOSE A REPLACEMENT OR A REFUND WHEN THE VEHICLE IS FOUND TO BE A "LEMON".
- REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAX, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS.
- REQUIRES THE BUREAU OF AUTOMOTIVE REPAIR TO ESTABLISH A PROGRAM TO CERTIFY THAT MANUFACTURER-RUN ARBITRATION PROGRAMS ARE OPERATED PROPERLY AND FAIRLY. CERTIFICATION WOULD NOT BE MANDATED BUT WOULD BE VOLUNTARY.
- PROVIDES THAT IF A MANUFACTURER DOES NOT PROVIDE A CERTIFIED ARBITRATION PROGRAM AND THE CONSUMER IS FORCED TO GO TO COURT TO RECOVER THE COST OF A "LEMON", THE COURT WILL AWARD TRIPLE DAMAGES IF THE CONSUMER WINS THE LAWSUIT PLUS ATTORNEY'S FEES.
- REQUIRES NEW CAR MANUFACTURERS TO PAY A FEE NOT TO EXCEED \$1 PER VEHICLE SOLD TO FUND THE CERTIFICATION PROGRAM.

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AB 2057 IS BASICALLY THE SAME BILL AS AB 3611 OF LAST YEAR WHICH WAS PASSED BY THIS HOUSE. I BELIEVE THAT THE BILL WILL RESULT IN BETTER TREATMENT OF THE CONSUMER, ENSURE THAT OWNERS OF "LEMONS" GET A FAIR HEARING, AND PROVIDE THEM WITH FULL REFUNDS WHEN THEY ARE SOLD A "LEMON" BY AN AUTO MANUFACTURER.

I ASK FOR YOUR "AYE" VOTE.

SUPPORT:

CA PUBLIC INTEREST RESEARCH GROUP (CALPIRG)  
CONSUMERS UNION  
MOTOR VOTERS

OPPOSITION:

AUTOMOBILE IMPORTERS OF AMERICA  
GENERAL MOTORS CORPORATION  
FORD MOTOR COMPANY  
CHRYSLER MOTORS

07/13/87

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AB 2057

I HAVE AUTHOR'S AMENDMENTS THAT WERE GIVEN TO THE COMMITTEE STAFF AND THE LEGISLATIVE ANALYST A WEEK AGO. BOTH OF THEIR ANALYSES REFLECT THOSE AMENDMENTS.

THE AMENDMENTS DO THE FOLLOWING:

- (1) ALLOW THE "LEMON" CAR OWNER TO MAKE ORAL ARGUMENTS IN AN ARBITRATION IF THE MANUFACTURER IS ALLOWED TO PRESENT ORAL EVIDENCE.
- (2) REQUIRE THE MANUFACTURER TO GIVE A "LEMON" CAR OWNER A REFUND IF AN ARBITRATION PANEL ORDERS ONE MORE REPAIR ATTEMPT AND THE REPAIR IS UNSUCCESSFUL.

6/1/87

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

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**MJN/681**

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JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO 94244-2550  
(916) 445-9555

September 17, 1987

Honorable George Deukmejian  
Governor, State of California  
State Capitol, First Floor  
Sacramento, California 95814

Attn: Bob Williams

Dear Governor Deukmejian:

**AB 2057 (Tanner) - Warranties: New Motor Vehicles**

The Attorney General's Office urges you to sign AB 2057.

This bill addresses a number of problems which have developed under the "lemon law" regarding defective new cars.

Enacted in 1982, the lemon law basically provides that if a manufacturer is unable to fix a defective new motor vehicle, then the buyer is entitled to either a replacement or reimbursement. One of the major problems to date with the law is that the mechanisms established by many manufacturers for resolving customer disputes have not complied with the minimum statutory criteria for such procedures. Moreover, even where the statutory criteria have been met poor decisions are often rendered because arbitrators are not trained in warranty law or do not have authority to order independent, expert examination of the vehicle.

AB 2057 will make the third-party dispute resolution process a more effective procedure for resolving these cases by: (a) authorizing the Bureau of Automotive Repair to approve the particular approach selected by each manufacturer; (b) requiring arbitrators to be familiar with applicable warranty law; and (c) authorize arbitrators to obtain independent, expert inspection of the vehicle.

Additionally, the bill substantially strengthens other areas of the lemon law by: (a) permitting the buyer to request a refund of the purchase price instead of being required to accept a new vehicle from the manufacturer; (b) providing a specific formula for determining the buyer's liability for

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Honorable George Deukmejian  
September 17, 1987  
Page 2

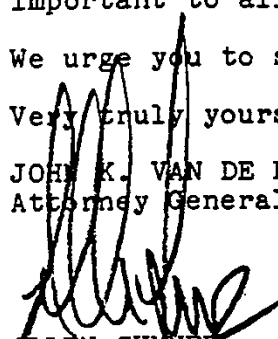
use of the vehicle prior to discovery of the defect; and  
(c) providing potential treble damages, in the court's  
discretion, in any action where the manufacturer breached  
the warranty and failed to provide a qualified third-party  
process for resolving the consumer's dispute. If there is  
an arbitration program, there would be no penalties.

We have now had five years of experience with the lemon law.  
AB 2057 address the major problems which have arisen to  
date, giving consumers who purchase defective new cars  
effective remedies against manufacturers who either will not  
or can not comply with their warranties. The bill is  
important to all of California's consumers.

We urge you to sign the measure.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

  
ALLEN SUMNER  
Senior Assistant Attorney General  
(916) 324-5477

AS:er/ckm/lac

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SACRAMENTO ADDRESS  
STATE CAPITOL  
SACRAMENTO 95814  
(916) 445-7783

DISTRICT OFFICE ADDRESS  
11100 VALLEY BOULEVARD  
SUITE 106  
EL MONTE, CA 91731  
(818) 442-9100



# Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

September 14, 1987

## COMMITTEES:

AGING AND LONG TERM CARE  
ENVIRONMENTAL SAFETY &  
TOXIC MATERIALS  
GOVERNMENTAL ORGANIZATION  
LABOR & EMPLOYMENT  
SUBCOMMITTEES:  
HAZARDOUS WASTE DISPOSAL  
ALTERNATIVES  
SPORTS & ENTERTAINMENT  
TOXIC DISASTER PREPAREDNESS

## MEMBER:

JOINT COMMITTEE ON  
FIRE, POLICE, EMERGENCY  
AND DISASTER SERVICES  
GOVERNOR'S TASK FORCE ON  
TOXICS, WASTE & TECHNOLOGY  
SELECT COMMITTEE ON  
LOW LEVEL NUCLEAR WASTE

Honorable George Deukmejian  
Governor, State of California  
State Capitol  
Sacramento, California 95814

Dear Governor Deukmejian:

Assembly Bill 2057 is now before you for your consideration. I introduced the measure to address two problems that arose during the implementation of the original California "Lemon Law" which I authored in 1982.

First, the original legislation did not give adequate direction on the refunds that consumers should be given when they are sold automobiles so defective that they cannot be repaired after a reasonable number of attempts. Because of this, owners of "lemons" now do not receive a refund on sales tax and the unused portion of license and vehicle registration fees -- an amount that is often in excess of \$1,000 or more -- when an auto manufacturer buys back a defective product. AB 2057 establishes a reasonable method for fairly compensating "lemon" car owners.

Second, California's original "Lemon Law" allowed for the use of arbitration programs sponsored by auto manufacturers to settle "lemon" cases, but did not establish a means of ensuring that these programs were operated fairly and impartially. Because of this, even though most auto manufacturers offer such arbitration programs, many consumers do not view them as an impartial means of settling easily and fairly disputes concerning defective vehicles. AB 2057 establishes a program in the Bureau of Automotive Repair to certify that arbitration programs are operated in accordance with principles that protect the rights of both the auto manufacturer and the consumer.

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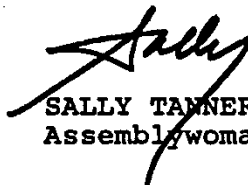
Honorable George Deukmejian  
September 14, 1987  
Page 2

AB 2057, in its enrolled version, has no known opposition. The measure is supported by Chrysler Corporation, the Attorney General, the California Public Interest Research Group, Consumers Union and Motor Voters. General Motors Corporation, Ford Motor Company, American Honda Motor Company and the Automobile Importers of America are all neutral on the bill. The support or neutrality of the auto manufacturers was achieved after amendments were made to the bill in the Senate Judiciary Committee.

Assembly Bill 2057, as it is before you, is a measure that updates consumer law in light of the past four years of experience in implementing the original California "Lemon Law". It accomplishes this by carefully balancing the rights of consumers against the rights and responsibilities of auto manufacturers. The bill is a moderate measure that moves this area of consumer law forward in a reasonable, but significant, manner.

I urge you to sign it into law.

Sincerely,



SALLY TANNER  
Assemblywoman, 60th District

ST:acf

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**ENROLLED BILL REPORT**

9.15  
**Business, Transportation and Housing Agency**

DEPARTMENT OF <b>Motor Vehicles</b>	AUTHOR <b>Tanner</b>	BILL NUMBER <b>AB 2057</b>
SUBJECT <b>Warranties: New Motor Vehicles</b>		<b>9-17-87</b>

**SUMMARY:** Requires the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes under the "lemon law"; requires funding of the program through an assessment of not more than \$1 for each vehicle sold, leased or distributed by manufacturers, distributors and their branches; provides an appropriation to offset DMV costs; specifies an operative date of July 1, 1988.

**SPONSOR:** The Author

**IMPACT ASSESSMENT:** Existing law provides that a manufacturer must make a reasonable effort to repair a motor vehicle when that vehicle is not in substantial conformity with applicable warranties. Under the current statutes, it is the buyers responsibility to notify the manufacturer directly when normal efforts to correct the defect through the dealer have failed. At that point, a dispute resolution process is initiated which is a prelude to any legal action to require replacement or refund.

Consumers have complained that the existing procedures, which are administered by the manufacturers, are subject to lengthy delays and are not conducted with impartiality.

This bill is meant to reduce the inequities purported to exist under the present system so that owners of seriously defective vehicles can achieve a fair and impartial ruling within a reasonable period of time. The proponents indicate that this would be achieved by requiring the Bureau of Automotive Repair (BAR) to both certify and decertify the arbitration programs and to perform a number of verification and reporting tasks in this regard.

The arbitration system would be funded by a fee of up to \$1 for each vehicle sold, leased or distributed by a manufacturer or distributor. The fee would be set by the renewal application process for manufacturers and distributors.


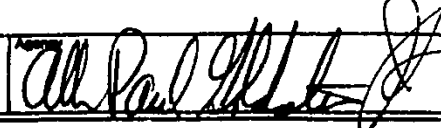
**FISCAL STATEMENT:** The Department would incur implementation costs of \$25,334; however the bill provides an appropriation mechanism to cover these costs. There is a delayed operative date of 7-1-88 in the bill; however, there is no mechanism to allow DMV to recoup the nearly \$7,000 in on-going costs which will be incurred annually thereafter. A detailed fiscal statement is attached.

**SUPPORT AND OPPOSITION:** Organizations formally supporting this measure are the California Public Interest Research Group; Consumers Union; Motor Voters; and the Attorney General.

RECOMMENDATION

**VETO**

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Department 	Date <b>4-18-87</b>	Agency 	Date <b>9-18-87</b>
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DMV 34 (REV. 1/87)

INV/OL:wln 9-17-87

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Opposition to the measure has been voiced by Ford Motor Co.; General Motors Corp; Chrysler Motors; and Automobile Importers of America.

VOTE COUNT: Assembly 54-20

Senate 39-0

ARGUMENTS PRO: This dispute resolution process may provide some increased protection for consumers who unwittingly purchase vehicles which later prove to be unrepairable.

ARGUMENTS CON: The introduction of arbitration to resolve consumer complaints regarding faulty vehicles removes from the manufacturer and distributor the responsibility of existing law. Although total consumer satisfaction with existing systems has not been obtained, introducing a third party certified by a governmental agency complicates the system and implies the question of governmental intervention in a market transaction. As it is presented, the system would remove the ability for the manufacturer and distributor and the consumer to negotiate a reasonable settlement by inserting a quasi government element.

The DMV would be forced to establish an accounting system which covers all manufacturers and distributors; however there does not appear to be any means by which the Department can monitor compliance or verify the payments. This would provide the opportunity for unscrupulous persons to misuse the system and underpay their fair share.

Manufacturers/distributors feel that the \$1 per vehicle fee required by this bill is unfair since they believe that the existing dispute resolution process is working well.

RECOMMENDATION: VETO

For further information please contact:

A. A. Pierce, Director  
Day telephone: (916) 732-0250  
Evening telephone: (916) 933-5057

For technical information please contact:

Gary Nishite, Chief  
Program and Policy Administration  
Day telephone: (916) 732-0623  
Evening telephone: (916) 395-7519

Rebecca Ferguson  
Legislative Liaison Officer  
Day telephone: (916) 732-7574  
Evening telephone: (916) 989-5030

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SUGGESTED VETO MESSAGE

To Members of the California Assembly:

I am returning Assembly Bill No. 2057 without my signature.

While the intent of the bill is to enhance the arbitration process used by new vehicle buyers whose vehicles prove to be unrepairable, as drafted AB 2057 will not accomplish that intent. I am concerned that the bill merely establishes another level of governmental intervention without any appreciable benefit to the individuals who may need it the most.

There are no guarantees that intervention by the BAR in the dispute resolution process will achieve the desired results. For example, the BAR can only certify and decertify the arbitration groups. There is no method by which an individual may receive either restitution or review of a poor decision through BAR.

There would also be an overlapping in responsibilities between the Department of Motor Vehicles and BAR. While DMV is supposed to collect the fees from the manufacturers and distributors, it is unclear as to who would be responsible for monitoring compliance and verifying the accuracy of these payments.

I am convinced that these problems would create confusion for both the manufacturers/distributors and the consumer. While the arbitration process may need to be enhanced, I do not believe that this measure will provide the means necessary to accomplish this worthwhile goal.

Cordially,

George Deukmejian  
Governor

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

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DEPARTMENT  
Finance

BILL NUMBER  
AB 2057

AUTHOR  
Tanner

AMENDMENT DATE  
September 4, 1987

SUBJECT

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded. The bill is double joined with AB 276.

SUMMARY OF REASON FOR SIGNATURE

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increases in costs to the State.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	LEVEL SO LA CO RV SO	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)						Code Fund
		FC	1987-88	FC	1988-89	FC	1989-90	
0860/BOE	SO	S	\$0.5	S	\$1	S	\$1	001/GF
1149/Retail Sales and Use Taxes	RV	U	-73	U	-145	U	-145	001/GF
1150/BAR	SO	C	158	C	293	C	293	499/Cert. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cert. Acct.
2740/NMVB	SO	A	25		--		--	044/MVA/STF
5300/DMV	RV		--	U	26		--	044/MVA/STF
1150/BAR	RV		--	U	-26		--	499/Cert. Acct.

Impact on State Appropriations Limit--Yes

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

(Continued)

RECOMMENDATION:

Sign the bill.

Department Director

Date

SEP 19 1987

Principal Analyst  
(223) R. Baker

Date  
9/16/87

Program Budget Manager  
Wallis L. Clark

Date

Governor's Office

Position noted

Position approved

Position disapproved

by: date:

CJ: BW1/0064A/1045C

ENROLLED BILL REPORT

Form DF-44 (Rev 03/87) Pink)

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**BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)**

Form DF-43

**AUTHOR****AMENDMENT DATE****BILL NUMBER**

Tanner

September 4, 1987

AB 2057

**ANALYSIS****A. Specific Findings (Continued)**

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund a new arbitration certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer for, or the manufacturer may reduce the amount of restitution by, an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

CJ:BW2/0064A/1045C

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## BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

## ANALYSIS

## A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

## B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and NMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

## Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	\$145,200

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.

CJ:BW3/0064A/1045C

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

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

ANALYSIS**B. Fiscal Analysis (Continued)**

According to DMV, the MMVB would incur one-time initial costs of \$25,000 in 1987-88, for which the bill contains a \$25,000 appropriation from the Motor Vehicle Account, State Transportation Fund. This amount, plus interest at 10 percent per year for six months (\$1,250), is to be transferred from the Certification Account, a new account in the Automotive Repair Fund created by the bill, to the Motor Vehicle Account in 1988-89. Ongoing costs will be absorbed within existing resources.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/1045C

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State of California

State and Consumer Services Agency

## Memorandum

To: Allan Zaremberg  
Governor's Office

Date: September 25, 1987

From: Office of the Secretary  
(916) 323-9493  
ATSS473-9493

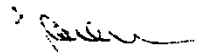
Subject: AB 2057 (Tanner)

Shirley has thoroughly reviewed AB 2057 as enrolled and would probably be delighted if it were vetoed. We do feel, however, absent the certification program, this is a good consumer bill.

The Department of Consumer Affairs submitted an analysis when the bill was in the Senate. After discussion with Shirley and Steve Blankenship, the Department was asked to add justification to the BAR certification program. This was not done by way of an analysis; however, the Department had many discussions with the author and interested parties. Amendments were taken to alleviate the manufacturers' concerns, but Tanner would not change the certification language.

According to the Caucus, private conversations with the manufacturers indicate they still don't like the bill, but feel the amendments weakened their opposition causing a neutral position. Also, they would probably like to have this issue finally put to rest. The longer it remains unresolved -- the more negative attention they receive from the media. We believe the manufacturers' arbitration programs have been fair and are encouraged by their volunteer efforts to mediate consumer complaints in an equitable manner.

Taking into consideration the above concerns, Agency is recommending signature on this bill. It would be a positive indication of the Administration's support of a program perceived by the consumer groups as needing some additional protection. We have attached both a sign message and a veto for the Governor's consideration.

  
Karen Morgan  
5-0784

KLM:dj

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

**SIGN MESSAGE**

**AB-2057 (Tanner)**

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.

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VETO MESSAGE  
AB 2057 (Tanner)

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian

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

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# ENROLLED BILL REPORT

Analyst: Gale Baker *the*  
 Bus. Ph: 323-0399  
 Hor Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY

BILL NUMBER: AB 2057

DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS

AUTHOR: Tanner

## SUMMARY

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## BILL SUMMARY

This bill would revise the new car lemon law and would require the Department of Consumer Affairs' Bureau of Automotive Repair to certify third party dispute resolution processes used for resolution of lemon law disputes. The Certification Program would be fully funded by fees paid by manufacturers and distributors based on the number of vehicles sold in California.)

## Background

Under the new car lemon law (Chapter 388, Statutes of 1982), a manufacturer who is unable to service or repair a new motor vehicle with a major defect after a reasonable number of attempts must either replace the vehicle or reimburse the buyer. A "reasonable number of attempts" is either four or more repair attempts on the same major defect or more than 30 days out of service within the first year or 12,000 miles of use. A new motor vehicle which meets this test is presumed to be a "lemon."

The buyer of a "lemon" may bring an action to enforce his or her rights under the lemon law. However, if the manufacturer has a qualified third party dispute resolution process (arbitration program) as defined in the lemon law, the buyer must first attempt to resolve the dispute by submitting it to the arbitration panel.

VOTE:	Assembly	Partisan	Senate	Partisan
		C D		R D
Floor:	54-20 (concurrency)		39-0	
Policy Committee:	6-1	56-22)	9-0	
Fiscal Committee:	18-5		9-0	

## RECOMMENDATION TO GOVERNOR:

SIGN ☒ VETO ☐ NO POSITION ☐ DEFER TO OTHER AGENCY ☐

DEPARTMENT DIRECTOR:

DATE:

AGENCY SECRETARY:

DATE:

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If the manufacturer does not have an arbitration program, if the manufacturer fails to give timely notice to the buyer of the existence of the arbitration program, if the buyer is dissatisfied with the panel's decision, or if the manufacturer fails to promptly fulfill the terms of the arbitration decision, the buyer may sue for replacement or restitution.

Since the passage of the lemon law in 1982, consumers and consumer groups have complained that there are a number of ambiguities in the law and that the arbitration programs often are not meeting the requirements for qualification or rendering decisions which confer the rights and remedies in the lemon law. They complain that arbitration programs are ineffectual and/or render decisions which are biased toward the manufacturer.

In the 1985-86 Session, Assemblywoman Tanner, who authored the original lemon law, introduced AB 3611 as a clean-up measure to the lemon law to respond to these grievances. The bill was initially opposed by manufacturers, but the final amended version, which was substantially similar to this bill, was unopposed. AB 3611 failed in the Senate Appropriations Committee for reasons unrelated to the substance of the bill.

The Department of Consumer Affairs worked closely with Assemblywoman Tanner in drafting the original lemon law and since its enactment has been very involved in monitoring its impact. The department publishes a widely-distributed consumer information pamphlet ("Lemon Aid for New Car Buyers") and advises consumers with lemon law complaints. In 1985 the department conducted a comprehensive study of the impact and effectiveness of the lemon law. In its New Car Lemon Law Report and Questionnaire (September 1985), the department noted a number of ambiguities in the law and problems with the arbitration programs, and identified possible legislative responses to these concerns. A number of the department's suggestions were incorporated into AB 3611 and this bill.

For instance, the lemon law does not state whether it is the manufacturer or the buyer who is entitled to decide between a replacement or restitution. Manufacturers would prefer to replace a vehicle rather than make restitution, but a consumer frustrated with having been stuck with a "lemon" understandably may prefer restitution.

The present law also does not specify what costs are included when awarding restitution or replacement. Restitution or replacement awards under current practice often do not make the buyer "whole" (i.e., compensate him or her for expenses such as sales tax, license and registration fees, and towing or rental car costs).

The calculation of the offset for the buyer's use prior to discovering the defect is a major source of disagreement between

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buyers and manufacturers. A frequent complaint is that manufacturers seek reimbursement equal to the offset for use of commercial rental cars, which would be excessive and unfair to the buyer.

Some buyers are being denied the remedies under the lemon law because their vehicle is a "demonstrator" or "dealer-owned" car, even though it was sold with a new car warranty.

The major grievance is that arbitration programs do not comply with the Federal Trade Commission's Rule 703, which sets forth minimum requirements for arbitration programs, or other requirements of the lemon law. Consumer groups complain that the FTC has failed to enforce Rule 703. FTC staff, however, state that the FTC does not have the authority to enforce Rule 703 unless a manufacturer has violated the federal Magnuson-Moss Consumer Warranty Act. (The Magnuson-Moss Act permits manufacturers to establish arbitration programs to resolve warranty disputes. If a manufacturer opts to use an arbitration program, the program must comply with the standards in Rule 703. The FTC states that a manufacturer who fails to comply with Rule 703 is not subject to FTC enforcement action unless the manufacturer also has violated the Magnuson-Moss Act.)

#### Specific Findings

AB 2057 would establish a state program for certifying third-party dispute resolution processes, specify requirements for certification, and allow courts to award treble damages to buyers of lemon cars under limited circumstances.

#### A. Certification

AB 2057 would require third party dispute resolution programs used for arbitration of lemon law cases to be certified by the Bureau of Automotive Repair (BAR). The BAR would be required to review the application for certification and conduct an onsite inspection to determine whether the program is in "substantial compliance" with the terms of this bill. If the program is not in substantial compliance, the BAR would deny certification and state in writing the reasons for the denial and the modifications necessary to obtain certification. The BAR would be required to make a final determination whether to certify a program within 90 days after receiving the application.

The BAR would be required to review the operations and performance of arbitration programs annually to determine whether the programs continue to be in substantial compliance with the certification standards. If a program is no longer in substantial compliance, the BAR would be required to issue a notice of decertification, stating the reasons for the proposed decertification and prescribing the modifications necessary to retain certification. The decertification would take effect 180 days after the notice is served, unless the BAR determines, after

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a public hearing, that the modifications necessary to bring the program into compliance have been made.

The BAR would be required to make at least two onsite inspections per year, investigate complaints from consumers regarding arbitration programs, and analyze representative complaints against each arbitration program. The BAR would be required to establish methods to measure customer satisfaction and identify violations of this bill, including an annual random survey of customers of the programs and analysis of the results.

The BAR also would be required to submit a biennial report to the Legislature evaluating the effectiveness of this bill; make available to the public summaries of the statistics and other information supplied by arbitration programs; and publish educational materials regarding the purposes of this bill.

The New Motor Vehicle Board (NMVB) would administer the collection of fees, to be paid by manufacturers and distributors, to fully fund the certification program. The BAR would be required to determine the amount necessary to fund its responsibilities under this bill and report that amount annually to the NMVB.

Manufacturers and distributors would be assessed a fee, not to exceed \$1 per vehicle sold, leased or distributed in California during the previous calendar year, to be paid to the DMV to fund the certification program. Fees would be deposited into a newly-created certification account in the Automotive Repair Fund and would be available to the BAR upon appropriation by the Legislature.

#### **B. Lemon Law Clean-Up Changes**

**Replacement/Restitution.** The bill would give the buyer the option to elect restitution instead of replacement of a "lemon." The manufacturer would be required to reimburse sales or use tax, license and registration fees and incidental damages such as reasonable repair, towing or rental car costs incurred by the buyer. The manufacturer would be reimbursed by the Board of Equalization for the sales tax (but not by the DMV for the license and registration fees).

The replacement cost or restitution may be offset by the buyer's use before the buyer delivered the vehicle to the manufacturer for correction of the defect. The amount attributed to the buyer's use would be determined by dividing the number of miles travelled prior to the time the buyer first delivered the vehicle to the manufacturer by 120,000, multiplied by the price of the car. (According to the state Department of Transportation, 120,000 miles is the average life expectancy of an automobile ("The Cost of Owning and Operating an Automobile or Van," 1984).)

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Disciplinary Action. If a manufacturer fails to honor a decision of the arbitration panel, the BAR would be required to notify the Department of Motor Vehicles (DMV) for appropriate enforcement action. Under current law, the DMV has the authority to suspend or revoke the license of a dealer, manufacturer or distributor who has willfully violated the terms and conditions of any warranty responsibilities under the Consumer Warranty Act, which contains the New Car Lemon Law.

"Demonstrator" Vehicles. The bill includes within the protection of the lemon law dealer-owned vehicles and "demonstrator" vehicles sold with a manufacturer's new car warranty.

Resale of a "Lemon". The manufacturer may not re-sell or re-lease a "lemon" unless the defect has been corrected and is disclosed to the new buyer or lessee, and the manufacturer warrants that the vehicle will be free of that defect for one year. (This provision applies only to vehicles which are bought back by the manufacturer as "lemons" pursuant to the Lemon Law not those which are transferred back to the manufacturer for any other reason).

Assertion of "Lemon Presumption". The vehicle buyer may assert the "lemon presumption" in any civil action, including small claims court, or any other formal or informal proceeding.

Qualified Arbitration Program. The bill amends the definition of what constitutes a "qualified" third party dispute resolution process for lemon law disputes. Current law defines a "qualified third party dispute resolution process" as one which complies with the FTC requirements for informal dispute resolution procedures contained in the Commission's Rule 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 must fulfill the terms of those decisions; and that annually provides to the DMV a report of its audit required by the Commission's Rule 703.

This bill would require dispute resolution programs to comply with the FTC's Rule 703 as those regulations read on January 1, 1987 and delete the requirement that manufacturers provide to the DMV a report of their audit (which none of them have done anyway). In addition, this bill would:

- o Require arbitrators to be instructed in and have copies of rules governing lemon law arbitration decisions (i.e., the FTC's Rule 703, Commercial Code provisions concerning the computation of damages, and the lemon law itself).
- o Require arbitration panels to "take into account" specified federal and state remedies in lemon law cases, and authorize arbitration panels to order any other equitable remedy appropriate under the circumstances of the case.

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- o Require the manufacturer to comply with an arbitration order for replacement or reimbursement.
- o Provide, at the request of the arbitrator or a majority of the arbitration panel, an independent inspection of the vehicle at no cost to the buyer.
- o Prohibit arbitrators deciding a dispute from being a party to the dispute, and prohibit anyone else (including an employee, agent or dealer for the manufacturer) from participating substantively in the merits of the dispute unless the buyer is allowed to participate also.

**Treble Damages.** This bill would authorize the court in a lemon law case to award treble damages to a "lemon" buyer if the manufacturer fails to rebut the "lemon presumption" and the manufacturer does not maintain an arbitration program which is in substantial compliance with the lemon law certification standards.

**Complaint Mediation.** Existing law gives the NMVB the authority to "arbitrate amicably or resolve" any honest difference of opinion or viewpoint between any member of the public and any new motor vehicle dealer or manufacturer. This bill would specifically give the NMVB the authority to mediate any such difference of opinion, including, by inference, a lemon law complaint.

In addition, the latest amendments to this bill incorporate the substance of AB 1367 (Tanner), which also would amend the New Car Lemon Law (the Department of Consumer Affairs prepared an enrolled bill report recommending signature of AB 1367 but the bill has since been placed on the inactive file), and is double-joined with AB 276 (Eaves) which, like AB 2057, amends the Revenue and Taxation Code.

The bill also appropriates \$25,334 to the Department of Motor Vehicles to computerize its billing system for collecting motor vehicles fees from automobile manufacturers under this bill. The appropriation is from the unappropriated surplus of the New Motor Vehicle Board Account in the Motor Vehicle Account. The New Motor Vehicle Board is not opposed to the appropriation as it will be repaid in the next fiscal year from fee revenues that will be collected beginning July 1, 1988. The DMV had requested this appropriation.

**Fiscal Impact**

This bill calls for a new state program, to be administered by the Bureau of Automotive Repair, and fully funded by fees paid by manufacturers and distributors when they renew their licenses.

A fiscal analysis is attached. The analysis projects expenditures of \$281,000 for Fiscal Year 1988-89 and thereafter and revenue of \$300,000 based on a \$.13-.16 assessment per vehicle sold, leased or distributed in the state. Four PYs (a Program Representative II, two Program Representatives I and one Office Technician (Typing) are projected).

Argument

**Interested Parties**

**Proponents:** Author (sponsor)  
Cal-PIRG  
Chrysler Motors  
Consumers Union

**Neutral:** Automobile Importers of America  
Department of Motor Vehicles  
Ford Motor Company  
General Motors  
New Motor Vehicle Board  
State Board of Equalization

**Opponents:** None known

Proponents argue that AB 2057 addresses various problems in the new car lemon law, enacted five years ago. For instance, under the lemon law, owners of "lemons" are required to use a "qualified" arbitration process before they may resort to the courts. However, the arbitration programs are either operated or sponsored by the manufacturers and they have not provided a fair and impartial process for consumers. In some cases, these panels have failed to maintain "qualified" programs and abide by provisions of the lemon law and the Federal Trade Commission's arbitration regulations. The panels often rely on experts supplied by manufacturers. Finally, while the panels frequently require one more repair attempt, they do not follow up to ensure that the vehicle has been satisfactorily repaired.

In addition, costs such as sales taxes, license and registration fees, and towing and rental car costs are not reimbursed, and the amount the manufacturer may deduct for the use of the vehicle from the replacement value is not specified and often results in deductions which are calculated to the advantage of the manufacturer and the detriment of the consumer.

Proponents argue that AB 2057 would help ensure that consumers get a fair and impartial hearing in the arbitration process. In sum, proponents argue that the bill contains the needed provisions to assure consumers stuck with "lemons" receive the compensation, rights and remedies to which they are entitled.

There is no known opposition to the bill in its present form, although some attorneys who represent consumers in lemon law cases have expressed concern with amendments which were negotiated with the automobile manufacturers to remove their opposition (such as an amendment which allows manufacturers to maintain certification if they are in "substantial" compliance with certification standards). However, while the department is sympathetic to their concerns, we note that the bill would not

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have passed without the amendments and do not agree that the amendments will reduce existing protections.

The Bureau of Automotive Repair supports the concept of the portion of the bill giving it certification and decertification powers but has expressed concern that its power to decertify does not constitute enough of a "hold" on a potentially recalcitrant manufacturer. It would seem, however, that a threat to institute decertification proceedings, if communicated honestly and with valid reasons, ought to be enough to induce the manufacturer to make any needed changes. In addition, the DMV would be empowered to suspend or revoke the license of a manufacturer who repeatedly fails to honor the decision of an arbitration panel.

The Department of Consumer Affairs has recommended (but not received) a "support" position on this bill.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED.

At present, there is no way for a buyer to determine whether an automobile manufacturer's arbitration program complies with the present legal requirements contained in FTC Rule 703 and the California lemon law. By providing for certification by a state agency, buyers will be reasonably assured that an arbitration panel is operating in compliance with the law. In addition, the bill provides a number of necessary clarifying and fine-tuning amendments to the lemon law.

NOTE: The concurrence vote on AB 2057 (September 10, 1987) was 56-22. Twelve Republicans voted for concurrence and all other Republicans voted against it. The Republican concurrence analysis recommended a "no" vote. The department believes that the caucus analysis (copy attached) presents only one side of the issue, and we would like to respond to the concerns raised therein.

First of all, the analysis does not acknowledge the serious problems with the current arbitration programs. As stated earlier under Background, the department conducted an extensive investigation of lemon law arbitration programs and found a number of problems with the way they are run. We believe that these problems need attention; consumer complaints to this department and other consumer protection agencies indicate a high level of dissatisfaction and a lack of faith in the present programs.

The lemon law gives consumers and manufacturers an alternative to court action to resolve lemon law problems. This is designed as much for the benefit of the manufacturer as the consumer; however, the analysis implies that this is to the consumer's and not the manufacturer's advantage. However, the lemon law provides - at the insistence of the manufacturers in negotiations on the original lemon law - that if the manufacturer

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has an arbitration program (and virtually all of them do), a consumer must submit the complaint to the arbitration panel prior to attempting to assert his or her rights in court.

Currently, these programs are not "overseen" by anyone. Their decisions are often biased in favor of the manufacturer. The arbitrators may not be trained in the rights and remedies of the lemon law (for instance, the Better Business Bureau, which handles lemon law cases for General Motors and most of the importers, has stated publicly that they purposely do not train their arbitrators in the lemon law), and their decisions often do not confer the rights and remedies in the lemon law. This practically negates the effectiveness of the lemon law and leaves the consumer with the unhappy choice of pursuing legal action (which few want or can afford) or with no recourse (i.e., taking a loss on the car).

Second, the analysis states that new car buyers will have to pay for the certification. While this is true (the manufacturers actually have to pay the assessment but it will probably be passed on to the consumer by way of a higher sticker price), the bill limits the amount assessed to not more than \$1.00 per vehicle. We believe this is an insignificant cost to help ensure that consumers will have fair recourse if the car they purchase turns out to be a lemon. In addition, the department's fiscal analysis indicates that a much lower fee (\$.13 - \$.16 per vehicle) will be adequate to fund the program (and in fact may result in a surplus which would be carried over to the next year).

Third, we disagree that the bill will create a bureaucracy. The Bureau of Automotive Repair's functions are limited under the bill, and ongoing certification functions would not require a great increase in PYs (our fiscal analysis indicates that four PYs will be needed to run the certification program).

Fourth, as to the treble damages provision, that provision has been significantly amended and the manufacturers are no longer opposed to it. The analysis states that the "triple (sic) damage provision is onerous." However, the manufacturers would not sign off on an onerous provision. The provision is very limited now. Recent amendments reduced the standard of compliance with certification standards to "substantial" compliance and made an award of treble damages discretionary with the court. Only in the most abusive circumstances by a manufacturer is that provision likely to be enforced, and only by those few consumers who have the financial capability to bring an action.

Fifth, we also question why this bill would create more legal costs for manufacturers. In keeping with the intent of the original lemon law, this bill is designed to reinforce viable alternatives that consumers and manufacturers can use to resolve complaints outside the court system. If anything, this bill is designed to decrease the possibility of court action by a dissatisfied consumer because it would improve the arbitration process.

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The fact is that very few consumers have the capacity or desire to be involved in legal action with a manufacturer. Also, there are very few consumer attorneys who are willing or able to represent consumers in lemon law cases. Legal recourse is an undesirable option for a consumer because the costs, frustration, delays and legal action are much more of a burden on the consumer than on the manufacturer.

Last, the reason the automobile manufacturers do not oppose the bill now is that the bill has been moderated to such an extent that they now consider it to be a reasonable approach (and far less onerous than the kinds of legislation they are confronting in several other states). In addition, it would be viewed as unresponsive to serious and prevalent complaints about defective new cars if they continued to oppose the bill after all of the concessions have been made.

In summary, the evidence is that the programs are not working according to the requirements in the law and there is no viable method to ascertain whether the programs meet certain required standards. Having poor quality programs that do not meet the standards bears heavily on a consumer who may be making payments on a new car, meanwhile not being able to use the car and having no alternate mode of transportation other than a rental car. One of the purposes of certification is to assure consumers that these programs meet the standards. These are programs which the law requires consumers to use prior to asserting their rights by private legal action. We therefore feel that consumers are entitled to assurance that the programs themselves are being conducted in conformance with the law.

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**SIGN MESSAGE**

**AB-2057 (Tanner)**

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.

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VETO MESSAGE  
AB 2057 (Tanner).

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian

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regional transit service funds from its apportionment as determined pursuant to Section 99231.

Periodic revisions to the regional route system may be made by the board upon review by the regional transit service advisory committee which shall meet on an as-needed basis, but not less than once a year to review the annual budget and assessment for regional transit services.

(c) The formula specified in subdivision (d) for funding regional services shall remain in effect for a minimum of three fiscal years and thereafter may be amended by agreement of all affected jurisdictions and the board. The regional transit service advisory committee shall review the assessment formula and recommend appropriate changes to the board and the jurisdictions.

(d) On an annual basis, at the time that the annual apportionment schedule is developed by the transportation planning agency, each jurisdiction shall be assessed a percentage of its apportionment equal to the percentage of its 1983-84 fiscal year apportionment claimed for support of regional services or 5 percent of its annual apportionment, whichever is greater. The assessment for the County of San Diego shall be applied only to that portion of the county apportionment attributable to the board's area of jurisdiction as defined in Section 120054. Any funds remaining after the annual assessment for regional services shall be made available to the jurisdictions for support of transit purposes.

(e) The board may enter into agreements with any local jurisdiction to provide local transit services by the means and upon terms and conditions as may be mutually agreed upon.

(f) The board shall, upon request of the City of Coronado, Poway, or Santee, or the County of San Diego, establish reserves consisting of that part of the board's allocation pursuant to paragraph (1) of subdivision (b) of Section 99233.5, which otherwise would have been allocated to each requesting city or county for the first two fiscal years after the board's acquisition of the San Diego Transit Corporation. The reserves shall be used by the board for transit purposes within the requesting city or county.

(g) The acquisition of the San Diego Transit Corporation by the board shall not create or impose any financial liability upon the County of San Diego or the cities within the board's area of jurisdiction for any obligations and liabilities of the corporation by virtue of their membership on the board.

SEC. 3. Section 120266 is added to the Public Utilities Code, to read:

120266. (a) The San Diego Metropolitan Transit Development Board may enter into contracts with any city in its area of jurisdiction and with the County of San Diego to license or regulate by ordinance any transportation services rendered wholly within the city's corporate limits or within the unincorporated area.

(b) The board shall levy the fees necessary to recover the full cost of licensing and regulating these services.

## CHAPTER 1280

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.

[Approved by Governor September 28, 1987. Filed with Secretary of State September 28, 1987.]

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

SECTION 1. Chapter 20.5 (commencing with Section 9889.70) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 20.5. CERTIFICATION OF THIRD PARTY DISPUTE  
RESOLUTION PROCESSES

9889.70. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Bureau" means the Bureau of Automotive Repair.

(b) "New motor vehicle" means a new motor vehicle as defined in subparagraph (B) of paragraph (4) of subdivision (e) of Section 1793.2 of the Civil Code.

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

(d) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter and which has been certified by the bureau pursuant to this chapter.

9889.71. The bureau shall establish a program for certifying each third party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. In establishing the program, the bureau shall do all of the following:

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

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

(c) Prescribe the information which each manufacturer, or other entity, that uses a third party dispute resolution process, and that applies to have that process certified by the bureau, shall provide the

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

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

9889.72. (a) Each manufacturer may establish, or otherwise make available to buyers or lessees of new motor vehicles, a qualified third party dispute resolution process for the resolution of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code. The manufacturer, or other entity, which operates the third party dispute resolution process shall apply to the bureau for certification of that process. The application for certification shall be accompanied by the information prescribed by the bureau.

(b) The bureau shall review the application and accompanying information and, after conducting an onsite inspection, shall determine whether the third party dispute resolution process is in substantial compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter. If the bureau determines that the process is in substantial compliance, the bureau shall certify the process. If the bureau determines that the process is not in substantial compliance, the bureau shall deny certification and shall state, in writing, the reasons for denial and the modifications in the operation of the process that are required in order for the process to be certified.

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

9889.73. (a) The bureau, in accordance with the time intervals prescribed pursuant to subdivision (d) of Section 9889.71, but at least once annually, shall review the operation and performance of each qualified third party dispute resolution process and determine, using the information provided the bureau as prescribed pursuant to subdivision (d) of Section 9889.71 and the monitoring and inspection information described in subdivision (c) of Section 9889.74, whether the process is operating in substantial compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter. If the bureau determines that the process is in substantial compliance, the certification shall remain in effect.

(b) If the bureau determines that the process is not in substantial

compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code or this chapter, the bureau shall issue a notice of decertification to the manufacturer, or other entity, which uses that process. The notice of decertification shall state the reasons for the issuance of the notice and prescribe the modifications in the operation of the process that are required in order for the process to retain its certification.

(c) A notice of decertification shall take effect 180 calendar days following the date the notice is served on the manufacturer, or other entity, which uses the process that the bureau has determined is not in substantial compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code or this chapter. The bureau shall withdraw the notice of decertification prior to its effective date if the bureau determines, after a public hearing, that the manufacturer, or other entity, which uses the process has made the modifications in the operation of the process required in the notice of decertification and is in substantial compliance with paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code and this chapter.

9889.74. In addition to any other requirements of this chapter, the bureau shall do all of the following:

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

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

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

(1) Onsite inspections of each certified process not less frequently than twice annually.

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

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

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

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

(f) Adopt regulations as necessary and appropriate to implement

the provisions of this chapter.

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) There is hereby created in the Automotive Repair Fund a Certification Account. Fees collected pursuant to this section shall be deposited in the Certification Account and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, every applicant for a license as a manufacturer, manufacturer branch, distributor, or distributor branch, and every applicant for the renewal of a license as a manufacturer, manufacturer branch, distributor, or distributor branch, shall accompany the application with a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the applicant in this state during the preceding calendar year, and shall pay to the Department of Motor Vehicles, for each issuance or renewal of the license, an amount prescribed by the New Motor Vehicle Board, but not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the applicant in this state during the preceding calendar year. The total fee paid by each licensee shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more licensees pursuant to this subdivision with respect to the same motor vehicle.

(c) On or before January 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use in calculating the amounts of the fees to be collected from applicants pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e) The New Motor Vehicle Board may adopt regulations to

implement this section.

9889.76. This chapter shall become operative on July 1, 1988.

SEC. 2. 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 this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by 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, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

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

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



method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of 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 a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

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

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in subparagraph (B) of paragraph (4) of subdivision (e), to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

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

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

charges such as sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

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

(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 on the odometer of the vehicle, 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, and it may be asserted by the buyer in any civil action,

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including an action in small claims court, or other formal or informal proceeding.

(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 after the decision is accepted by the buyer, 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 if the decision is accepted by the buyer, whichever occurs later.

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

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

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

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

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

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

(F) Provides, at the request of the arbitrator or a majority of the

arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

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

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

(I) Obtains and maintains certification by the Bureau of Automotive Repair pursuant to Chapter 20.5 (commencing with Section 9889.70) of Division 3 of the Business and Professions Code.

(4) For the purposes of subdivision (d) and 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 to the buyer or lessee.

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

(5) No person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed, the nonconformity is corrected, and the manufacturer warrants to

the new buyer or lessee in writing for a period of one year that the motor vehicle is free of that nonconformity.

SEC. 3. Section 1793.25 is added to the Civil Code, to read:

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

(b) Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption, in this state or tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(c) The manufacturer's claim for reimbursement and the board's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1, 6903, 6907, and 6908 thereof, insofar as those provisions are not inconsistent with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4 1/4-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) If the amount transferred pursuant to paragraph (1) is less than one hundred ten million dollars (\$110,000,000) in any fiscal year,

an additional amount equal to the difference between one hundred ten million dollars (\$110,000,000) and the amount so transferred shall be transferred, to the extent funds are available, as follows:

(A) For the 1986-87 fiscal year, from the General Fund.

(B) For the 1987-88 and each subsequent fiscal year, from the state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)).

(b) The balance shall be transferred to the General Fund.

(c) The estimate required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivision (a) shall be made quarterly.

SEC. 6. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4¾-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) If the amount transferred pursuant to paragraph (1) is less than one hundred ten million dollars (\$110,000,000) in any fiscal year, an additional amount equal to the difference between one hundred ten million dollars (\$110,000,000) and the amount so transferred shall be transferred, to the extent funds are available, as follows:

(A) For the 1986-87 fiscal year, from the General Fund.

(B) For the 1987-88 and each subsequent fiscal year, from the state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)).

(b) The following percentage of the amount of all revenues, less refunds, derived under this part attributable to the sale, storage, use or other consumption of aircraft jet fuel used in propelling aircraft the sale or use of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) and which are not subject to refund, shall be estimated by the State Board of Equalization, with

the concurrence of the Department of Finance, and shall be transferred to the Aeronautics Account in the State Transportation Fund:

(1) For the 1988-89 fiscal year, 50 percent of the amount.

(2) For the 1989-90 fiscal year and each fiscal year thereafter, 100 percent of the amount.

(c) After application of subdivisions (a) and (b), the balance shall be transferred to the General Fund.

(d) The estimate required by subdivisions (a) and (b) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivisions (a) and (b) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivision (a) and subdivision (b) shall be made quarterly.

SEC. 7. Section 3050 of the Vehicle Code is amended to read:

3050. The board shall do all of the following:

(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing such matters as are specifically committed to its jurisdiction.

(b) Hear and consider, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) 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 pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After such consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance,



renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as such license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and consider, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, or 3065. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060).

SEC. 8. The sum of twenty-five thousand three hundred thirty-four dollars (\$25,334) is hereby appropriated from the funds deposited, pursuant to Section 3016 of the Vehicle Code, in the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for the purpose of reimbursing the Department of Motor Vehicles for its expenses in implementing Section 9889.75 of the Business and Professions Code.

(b) The amount appropriated by subdivision (a) shall be repaid, plus interest, from the Certification Account in the Automotive Repair Fund in the 1988-89 fiscal year, as provided in subdivision (c). The interest shall be charged at the rate earned by the Pooled Money Investment Account in the General Fund during the period from January 1, 1988, until the date the transfer of funds required by subdivision (c) takes place and shall be paid for that same period of time. The Bureau of Automotive Repair shall take into account the requirement to repay the amount appropriated by subdivision (a), plus interest, in determining the dollar amount per vehicle specified in subdivision (c) of Section 9889.75 of the Business and Professions Code.

(c) The sum of twenty-five thousand three hundred thirty-four dollars (\$25,334), plus so much more as shall be needed to pay the interest required by subdivision (b), shall be transferred from the Certification Account in the Automotive Repair Fund to the Motor Vehicle Account in the State Transportation Fund during the 1988-89 fiscal year. The transfer shall be in repayment of the amount appropriated pursuant to subdivision (a), plus interest as required by subdivision (b), and shall be deposited in the Motor Vehicle Account to the credit of the funds deposited in that account pursuant to Section 3016 of the Vehicle Code.

If the amount used by the New Motor Vehicle Board to reimburse the Department of Motor Vehicles for its expenses in implementing Section 9889.75 of the Business and Professions Code is less than the amount appropriated by subdivision (a), the unused portion of the appropriation shall revert to the Motor Vehicle Account and the amount transferred by this subdivision shall be reduced to the amount actually used by the New Motor Vehicle Board to reimburse the Department of Motor Vehicles, plus the interest on that amount.

This subdivision shall become operative on July 1, 1988.

SEC. 9. The amendment of subdivision (b) of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.

SEC. 10. Section 6 of this bill incorporates amendments to Section 7102 of the Revenue and Taxation Code proposed by both this bill and AB 276. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 7102 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 276, in which case Section 5 of this bill shall not become operative.

#### CHAPTER 1281

An act to amend Section 5490 of, to add Sections 5491.1, 5491.2, 5498.1, and 5498.2 to, and to add Chapter 2.6 (commencing with Section 5499.1) to Division 3 of, the Business and Professions Code, relating to on-premises advertising.

[Approved by Governor September 28, 1987. Filed with Secretary of State September 28, 1987.]

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

SECTION 1. Section 5490 of the Business and Professions Code is amended to read:

5490. (a) This chapter applies only to lawfully erected on-premises advertising displays.

(b) As used in this chapter, "on-premises advertising displays" means any structure, housing, sign, device, figure, statuary, painting, display, message placard, or other contrivance, or any part thereof, which has been designed, constructed, created, intended, or engineered to have a useful life of 15 years or more, and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes:

(1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located.

(2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been lawfully erected.

(c) As used in this chapter, "introduced or adopted prior to March 12, 1983," means an ordinance or other regulation of a city or county which was officially presented before, formally read and announced by, or adopted by the legislative body prior to March 12, 1983.

(d) This chapter does not apply to advertising displays used exclusively for outdoor advertising pursuant to the Outdoor Advertising Act (Chapter 2 (commencing with Section 5200)).

CALIFORNIA LEGISLATURE

1987-88 REGULAR SESSION  
1987-88 FIRST EXTRAORDINARY SESSION

# SUMMARY DIGEST

*of*

Statutes Enacted and Resolutions Adopted in 1987

*and*

1979-1987 Statutory Record

**VOLUME ONE**



DARRYL R. WHITE  
*Secretary of the Senate*

Compiled by  
BION M. GREGORY  
*Legislative Counsel*

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**MJN/718**

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

Ch. 1279 (AB 802) Killea. Transit: San Diego County.

(1) Under the Mills-Deddeh Transit Development Act, the San Diego Metropolitan Transit Development Board is created with specified duties and powers.

This bill would delete obsolete language and make a clarifying change in provisions relating to the board.

(2) Existing law assigns to the board responsibility for transportation planning and for the construction and operation of public transit systems and related transportation facilities and services in portions of San Diego County.

This bill would authorize the board to contract with the county and with cities in its area of jurisdiction to license or to regulate by ordinance any transportation services rendered within the unincorporated area of the county or within the limits of a contracting city, and would require the board to levy fees to recover the cost of licensing and regulating those services.

Ch. 1280 (AB 2057) 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 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.

(3) The bill would appropriate \$25,334 from the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for reimbursement to the Department of Motor Vehicles for expenses incurred in carrying out provisions of the act, and would provide for the repayment of that amount, as specified.

(4) This bill would incorporate additional changes in Section 7102 of the Revenue and Taxation Code, proposed by AB 276, to be operative only if AB 276 and this bill are both chaptered and become effective January 1, 1987, and this bill is chaptered last.

Ch. 1281 (SB 512) Ellis. On-premises advertising displays.

Under existing law, with specified exceptions, no on-premises advertising displays, as defined, may be compelled to be removed or abated by any city or county ordinance.

NOTE: Superior numbers appear as a separate section at the end of the digests.

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**STATE OF CALIFORNIA**  
Supreme Court of California

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**STATE OF CALIFORNIA**  
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**US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

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ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 1
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ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 6

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Date

/s/Chris Hsu

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