

No. S266034

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LISA NIEDERMEIER,
Plaintiff and Respondent,

v.

FCA US LLC,
Defendant and Appellant.

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

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE
VOLUME 4 OF 9, Pages 884-1178 of 2617**

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1 made the modifications in the operation of the process
2 required in the notice of decertification and is in
3 compliance with paragraph (3) of subdivision (e) of
4 Section 1793.2 of the Civil Code and this chapter.

5 9889.74. In addition to any other requirements of this
6 chapter, the bureau shall do all of the following:

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

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

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

21 (1) Onsite inspections of each certified process not less
22 frequently than twice annually.

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

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

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

35 (e) Submit a biennial report to the Legislature
36 evaluating the effectiveness of this chapter, make
37 available to the public summaries of the statistics and
38 other information supplied by each qualified third party
39 resolution process, and publish educational materials
40 regarding the purposes of this chapter.

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

3 9889.75. The New Motor Vehicle Board in the
4 Department of Motor Vehicles shall, in accordance with
5 the procedures prescribed in this section, administer the
6 collection of fees for the purposes of fully funding the
7 administration of this chapter.

8 (a) There is hereby created in the Automotive Repair
9 Fund a Certification Account. Fees collected pursuant to
10 this section shall be deposited in the Certification
11 Account and shall be available, upon appropriation by the
12 Legislature, exclusively to pay the expenses incurred by
13 the bureau in administering this chapter. If at the
14 conclusion of any fiscal year the amount of fees collected
15 exceeds the amount of expenditures for that purpose
16 during that fiscal year, the surplus in the Certification
17 Account shall be carried over into the succeeding fiscal
18 year.

19 (b) Beginning July 1, 1988, every applicant for a
20 license as a manufacturer, manufacturer branch,
21 distributor, or distributor branch, and every applicant for
22 the renewal of a license as a manufacturer, manufacturer
23 branch, distributor, or distributor branch, shall
24 accompany the application with a statement of the
25 number of motor vehicles sold, leased, or otherwise
26 distributed by or for the applicant in this state during the
27 ~~preceding calendar year, together with a breakdown by~~
28 ~~make, model, and model year and any other information~~
29 ~~that the New Motor Vehicle Board may require, and shall~~
30 ~~preceding calendar year, and shall pay to the~~
31 Department of Motor Vehicles, for each issuance or
32 renewal of the license, an amount prescribed by the New
33 Motor Vehicle Board, but not to exceed one dollar (\$1)
34 for each motor vehicle sold, leased, or distributed by or
35 for the applicant in this state during the preceding
36 calendar year. The total fee paid by each licensee shall be
37 rounded to the nearest dollar in the manner described in
38 Section 9559 of the Vehicle Code. No more than one
39 dollar (\$1) shall be charged, collected, or received from
40 any one or more licensees pursuant to this subdivision



1 with respect to the same motor vehicle.

2 (c) On or before January 1 of each calendar year, the
3 bureau shall determine the dollar amount, not to exceed
4 one dollar (\$1) per motor vehicle, which shall be
5 collected and received by the Department of Motor
6 Vehicles beginning July 1 of that year, based upon an
7 estimate of the number of sales, leases, and other
8 dispositions of motor vehicles in this state during the
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 of
18 a kind that is required to be registered under the Vehicle
19 Code, but the term does not include a motorcycle, a
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 July
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 warranties
34 or designate and authorize in this state as service and
35 repair facilities independent repair or service facilities
36 reasonably close to all areas where its consumer goods are
37 sold to carry out the terms of such warranties.

38 As a means of complying with this paragraph, a
39 manufacturer may enter into warranty service contracts
40 with independent service and repair facilities. The

1 warranty service contracts may provide for a fixed
2 schedule of rates to be charged for warranty service or
3 warranty repair work, however, the rates fixed by such
4 contracts shall be in conformity with the requirements of
5 subdivision (c) of Section 1793.3. The rates established
6 pursuant to subdivision (c) of Section 1793.3, between the
7 manufacturer and the independent service and repair
8 facility, shall not preclude a good faith discount which is
9 reasonably related to reduced credit and general
10 overhead cost factors arising from the manufacturer's
11 payment of warranty charges direct to the independent
12 service and repair facility. The warranty service contracts
13 authorized by this paragraph shall not be executed to
14 cover a period of time in excess of one year, and may be
15 renewed only by a separate, new contract or letter of
16 agreement between the manufacturer and the
17 independent service and repair facility.

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

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

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

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



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

20 (d) (1) Except as provided in paragraph (2), if the
 21 manufacturer or its representative in this state does not
 22 service or repair the goods to conform to the applicable
 23 express warranties after a reasonable number of
 24 attempts, the manufacturer shall either replace the goods
 25 or reimburse the buyer in an amount equal to the
 26 purchase price paid by the buyer, less that amount
 27 directly attributable to use by the buyer prior to the
 28 discovery of the nonconformity.

29 (2) If the manufacturer or its representative in this
 30 state is unable to service or repair a new motor vehicle,
 31 as that term is defined in subparagraph (B) of paragraph
 32 (4) of subdivision (e), to conform to the applicable
 33 express warranties after a reasonable number of
 34 attempts, the manufacturer shall either promptly replace
 35 the new motor vehicle in accordance with subparagraph
 36 (A) or promptly make restitution to the buyer in
 37 accordance with subparagraph (B). However, the buyer
 38 shall be free to elect restitution in lieu of replacement,
 39 and in no event shall the buyer be required by the
 40 manufacturer to accept a replacement vehicle.

1 (A) In the case of replacement, the manufacturer shall
 2 replace the buyer's vehicle with a new motor vehicle
 3 substantially identical to the vehicle replaced. The
 4 replacement vehicle shall be accompanied by all express
 5 and implied warranties that normally accompany new
 6 motor vehicles of that specific kind. The manufacturer
 7 also shall pay for, or to, the buyer the amount of any sales
 8 or use tax, license fees, registration fees, and other official
 9 fees which the buyer is obligated to pay in connection
 10 with the replacment, 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 buyer shall
 27 only be liable to pay the manufacturer an amount directly
 28 attributable to use by the buyer of the replaced vehicle
 29 prior to the time the buyer first delivered the vehicle to
 30 the manufacturer or distributor, or its authorized service
 31 and repair facility for correction of the problem that gave
 32 rise to the nonconformity. When restitution is made
 33 pursuant to subparagraph (B), the amount to be paid by
 34 the manufacturer to the buyer may be reduced by the
 35 manufacturer by that amount directly attributable to use
 36 by the buyer prior to the time the buyer first delivered
 37 the vehicle to the manufacturer or distributor, or its
 38 authorized service and repair facility for correction of the
 39 problem that gave rise to the nonconformity. The
 40 amount directly attributable to use by the buyer shall be



1 determined by multiplying the actual price of the new
 2 motor vehicle paid or payable by the buyer, including
 3 any charges for transportation and
 4 manufacturer-installed options, by a fraction having as its
 5 denominator 120,000 and having as its numerator the
 6 number of miles traveled by the new motor vehicle prior
 7 to the time the buyer first delivered the vehicle to the
 8 manufacturer or distributor, or its authorized service and
 9 repair facility for correction of the problem that gave rise
 10 to the nonconformity. Nothing in this paragraph shall in
 11 any way limit the rights or remedies available to the
 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 one
 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 and
 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 by
 23 reason of repair of nonconformities by the manufacturer
 24 or its agents for a cumulative total of more than 30
 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 this
 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 by
 38 the buyer in any civil action, including an action in small
 39 claims court, or other formal or informal proceeding.

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



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

7 (E) Requires the manufacturer, when the process
 8 orders, *under the terms of this chapter*, either that the
 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 a
 14 majority of the arbitration panel, for an inspection and
 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 the~~

19 (G) Takes into account, in rendering decisions, all
 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~~ *this chapter*, and any
 27 other equitable considerations appropriate in the
 28 circumstances. Nothing in this chapter requires that, to
 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 awards
 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) and
 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, or~~

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

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

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

27 (4) For the purposes of subdivision (d) and this
 28 subdivision the following terms have the following
 29 meanings:

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

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



1 used exclusively off the highways. A "demonstrator" is a
2 vehicle assigned by a dealer for the purpose of
3 demonstrating qualities and characteristics common to
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 the
7 result of a ~~nonconformity pursuant to paragraph (2) of~~
8 ~~subdivision (d)~~ unless the nature of the nonconformity
9 experienced by the original buyer or lessee is clearly and
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, to
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 for
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 that
27 motor vehicle. The State Board of Equalization may
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 the
32 application of the sales and use tax to the gross receipts
33 and the sales price from the sale, and the storage, use, or
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 and
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



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 this
29 part, and pursuant to Section 1793.25 of the Civil Code, or
30 be transferred in the following manner:

31 (a) (1) All revenues, less refunds, derived under this
32 part at the 4¾ 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 Law
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

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

6 (2) If the amount transferred pursuant to paragraph
7 (1) is less than one hundred ten million dollars
8 (\$110,000,000) in any fiscal year, an additional amount
9 equal to the difference between one hundred ten million
10 dollars (\$110,000,000) and the amount so transferred shall
11 be transferred, to the extent funds are available, as
12 follows:

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

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

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

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

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

30 3050. The board shall do all of the following:

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

36 (b) Hear and consider, within the limitations and in
37 accordance with the procedure provided, an appeal
38 presented by an applicant for, or holder of, a license as a
39 new motor vehicle dealer, manufacturer, manufacturer
40 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 of
3 the department.

4 (c) Consider any matter concerning the activities or
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, or
8 representative pursuant to Chapter 4 (commencing with
9 Section 11700) of Division 5 submitted by any person. A
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 of
18 matters that the board deems reasonable, and make a
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 all
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 in
35 accordance with the procedure provided, a protest
36 presented by a franchisee pursuant to Section 3060, 3062,
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 4

6.1 (commencing with Section 3060).

In the event the board...
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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



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.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 20.5 (commencing with Section
2 9889.70) is added to Division 3 of the Business and
3 Professions Code, to read:

4
5 CHAPTER 20.5. CERTIFICATION OF THIRD PARTY
6 DISPUTE RESOLUTION PROCESSES

7
8 9889.70. Unless the context requires otherwise, the
9 following definitions govern the construction of this
10 chapter:

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

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

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

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

27 9889.71. The bureau shall establish a program for



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

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

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

13 (c) Prescribe the information which each
 14 manufacturer, or other entity, that uses a third party
 15 dispute resolution process, and that applies to have that
 16 process certified by the bureau, shall provide the bureau
 17 in the application for certification. In prescribing the
 18 information to accompany the application for
 19 certification, the bureau shall require the manufacturer,
 20 or other entity, to provide only that information which
 21 the bureau finds is reasonably necessary to enable the
 22 bureau to determine whether the third party dispute
 23 resolution process is in *substantial* compliance with
 24 paragraph (3) of subdivision (e) of Section 1793.2 of the
 25 Civil Code and this chapter.

26 (d) Prescribe the information that each qualified third
 27 party dispute resolution process shall provide the bureau,
 28 and the time intervals at which the information shall be
 29 required, to enable the bureau to determine whether the
 30 qualified third party dispute resolution process continues
 31 to operate in *substantial* compliance with paragraph (3)
 32 of subdivision (e) of Section 1793.2 of the Civil Code and
 33 this chapter.

34 9889.72. (a) Each manufacturer may establish, or
 35 otherwise make available to buyers or lessees of new
 36 motor vehicles, a qualified third party dispute resolution
 37 process for the resolution of disputes pursuant to
 38 paragraph (2) of subdivision (e) of Section 1793.2 of the
 39 Civil Code. The manufacturer, or other entity, which
 40 operates the third party dispute resolution process shall

1 apply to the bureau for certification of that process. The
 2 application for certification shall be accompanied by the
 3 information prescribed by the bureau.

4 (b) The bureau shall review the application and
 5 accompanying information and, after conducting an
 6 onsite inspection, shall determine whether the third
 7 party dispute resolution process is in *substantial*
 8 compliance with paragraph (3) of subdivision (e) of
 9 Section 1793.2 of the Civil Code and this chapter. If the
 10 bureau determines that the process is in *substantial*
 11 compliance, the bureau shall certify the process. If the
 12 bureau determines that the process is not in *substantial*
 13 compliance, the bureau shall deny certification and shall
 14 state, in writing, the reasons for denial and the
 15 modifications in the operation of the process that are
 16 required in order for the process to be certified.

17 (c) The bureau shall make a final determination
 18 whether to certify a third party dispute resolution process
 19 or to deny certification not later than 90 calendar days
 20 following the date the bureau accepts the application for
 21 certification as complete.

22 9889.73. (a) The bureau, in accordance with the time
 23 intervals prescribed pursuant to subdivision (d) of
 24 Section 9889.71, but at least once annually, shall review
 25 the operation and performance of each qualified third
 26 party dispute resolution process and determine, using the
 27 information provided the bureau as prescribed pursuant
 28 to subdivision (d) of Section 9889.71 and the monitoring
 29 and inspection information described in subdivision (c)
 30 of Section 9889.74, whether the process is operating in
 31 *substantial* compliance with paragraph (3) of subdivision
 32 (e) of Section 1793.2 of the Civil Code and this chapter.
 33 If the bureau determines that the process is in *substantial*
 34 compliance, the certification shall remain in effect.

35 (b) If the bureau determines that the process is not in
 36 *substantial* compliance with paragraph (3) of subdivision
 37 (e) of Section 1793.2 of the Civil Code or this chapter, the
 38 bureau shall issue a notice of decertification to the
 39 manufacturer, or other entity, which uses that process.
 40 The notice of decertification shall state the reasons for the



1 issuance of the notice and prescribe the modifications in
2 the operation of the process that are required in order for
3 the process to retain its certification.

4 (c) A notice of decertification shall take effect 180
5 calendar days following the date the notice is served on
6 the manufacturer, or other entity, which uses the process
7 that the bureau has determined is not in *substantial*
8 compliance with paragraph (3) of subdivision (e) of
9 Section 1793.2 of the Civil Code or this chapter. The
10 bureau shall withdraw the notice of decertification prior
11 to its effective date if the bureau determines, after a
12 public hearing, that the manufacturer, or other entity,
13 which uses the process has made the modifications in the
14 operation of the process required in the notice of
15 decertification and is in *substantial* compliance with
16 paragraph (3) of subdivision (e) of Section 1793.2 of the
17 Civil Code and this chapter.

18 9889.74. In addition to any other requirements of this
19 chapter, the bureau shall do all of the following:

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

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

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

34 (1) Onsite inspections of each certified process not less
35 frequently than twice annually.

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

40 (3) Analyses of the annual surveys required by

1 subdivision (b).

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

8 (e) Submit a biennial report to the Legislature
9 evaluating the effectiveness of this chapter, make
10 available to the public summaries of the statistics and
11 other information supplied by each qualified third party
12 resolution process, and publish educational materials
13 regarding the purposes of this chapter.

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

16 9889.75. The New Motor Vehicle Board in the
17 Department of Motor Vehicles shall, in accordance with
18 the procedures prescribed in this section, administer the
19 collection of fees for the purposes of fully funding the
20 administration of this chapter.

21 (a) There is hereby created in the Automotive Repair
22 Fund a Certification Account. Fees collected pursuant to
23 this section shall be deposited in the Certification
24 Account and shall be available, upon appropriation by the
25 Legislature, exclusively to pay the expenses incurred by
26 the bureau in administering this chapter. If at the
27 conclusion of any fiscal year the amount of fees collected
28 exceeds the amount of expenditures for that purpose
29 during that fiscal year, the surplus in the Certification
30 Account shall be carried over into the succeeding fiscal
31 year.

32 (b) Beginning July 1, 1988, every applicant for a
33 license as a manufacturer, manufacturer branch,
34 distributor, or distributor branch, and every applicant for
35 the renewal of a license as a manufacturer, manufacturer
36 branch, distributor, or distributor branch, shall
37 accompany the application with a statement of the
38 number of motor vehicles sold, leased, or otherwise
39 distributed by or for the applicant in this state during the
40 preceding calendar year, and shall pay to the



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

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

26 (d) For the purposes of this section, "motor vehicle"
 27 means a new passenger or commercial motor vehicle of
 28 a kind that is required to be registered under the Vehicle
 29 Code, but the term does not include a motorcycle, a
 30 motor home, or any vehicle whose gross weight exceeds
 31 10,000 pounds.

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

34 9889.76. This chapter shall become operative on July
 35 1, 1988.

36 SEC. 2. Section 1793.2 of the Civil Code is amended
 37 to read:

38 1793.2. (a) Every manufacturer of consumer goods
 39 sold in this state and for which the manufacturer has
 40 made an express warranty shall:

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

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

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

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

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



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 his
 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 this
 10 state, unless, due to reasons of size and weight, or method
 11 of attachment, or method of installation, or nature of the
 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 of
 20 nonconformity the manufacturer shall, at its option,
 21 service or repair the goods at the buyer's residence, or
 22 pick up the goods for service and repair, or arrange for
 23 transporting the goods to its service and repair facility.
 24 All reasonable costs of transporting the goods when a
 25 buyer cannot return them for any of the above reasons
 26 shall be at the manufacturer's expense. The reasonable
 27 costs of transporting nonconforming goods after delivery
 28 to the service and repair facility until return of the goods
 29 to the buyer 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



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 use
 6 by the buyer prior to the time the buyer first delivered
 7 the vehicle to the manufacturer or distributor, or its
 8 authorized service and repair facility for correction of the
 9 problem that gave rise to the nonconformity. The
 10 amount 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 and
 14 manufacturer-installed options, by a fraction having as its
 15 denominator 120,000 and having as its numerator the
 16 number of miles traveled by the new motor vehicle prior
 17 to the time the buyer first delivered the vehicle to the
 18 manufacturer or distributor, or its authorized service and
 19 repair facility for correction of the problem that gave rise
 20 to the nonconformity. Nothing in this paragraph shall in
 21 any way limit the rights or remedies available to the
 22 buyer under any other law.

23 (e) (1) It shall be presumed that a reasonable number
 24 of attempts have been made to conform a new motor
 25 vehicle to the applicable express warranties if, within one
 26 year from delivery to the buyer or 12,000 miles on the
 27 odometer of the vehicle, whichever occurs first, either
 28 (A) the same nonconformity has been subject to repair
 29 four or more times by the manufacturer or its agents and
 30 the buyer has at least once directly notified the
 31 manufacturer of the need for the repair of the
 32 nonconformity, or (B) the vehicle is out of service by
 33 reason of repair of nonconformities by the manufacturer
 34 or its agents for a cumulative total of more than 30
 35 calendar days since delivery of the vehicle to the buyer.
 36 The 30-day limit shall be extended only if repairs cannot
 37 be performed due to conditions beyond the control of the
 38 manufacturer or its agents. The buyer shall be required
 39 to directly notify the manufacturer pursuant to
 40 subparagraph (A) only if the manufacturer has clearly

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



1 settlement procedures as set forth in Part 703 of Title 16
2 of the Code of Federal Regulations, as those regulations
3 read on January 1, 1987.

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

6 (C) Prescribes a reasonable time, not to exceed 30
7 days after the decision is accepted by the buyer, within
8 which the manufacturer or its agent must fulfill the terms
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 Part
13 703 of Title 16 of the Code of Federal Regulations as those
14 regulations read on January 1, 1987, Division 2
15 (commencing with Section 2101) of the Commercial
16 Code, and this chapter.

17 (E) Requires the manufacturer, when the process
18 orders, under the terms of this chapter, either that the
19 nonconforming motor vehicle be replaced if the buyer
20 consents to this remedy or that restitution be made to the
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 or a
24 majority of the arbitration panel, for an inspection and
25 written report on the condition of a nonconforming
26 motor vehicle, at no cost to the buyer, by an automobile
27 expert who is independent of the manufacturer.

28 (G) Takes into account, in rendering decisions, all
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. Nothing
37 in this chapter requires that, to be certified as a qualified
38 third party dispute resolution process pursuant to this
39 section, decisions of the process must consider or provide
40 remedies in the form of awards of punitive damages or

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



1 buyer or lessee is clearly and conspicuously disclosed, the
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 that
5 nonconformity.

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

8 1793.25. (a) Notwithstanding Part 1 (commencing
9 with Section 6001) of Division 2 of the Revenue and
10 Taxation Code, the State Board of Equalization shall
11 reimburse the manufacturer of a new motor vehicle for
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) of
15 Section 1793.2, when satisfactory proof is provided that
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 that
19 motor vehicle. The State Board of Equalization may
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 the
24 application of the sales and use tax to the gross receipts
25 and the sales price from the sale, and the storage, use, or
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 and
30 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, 6907,
34 and 6908 thereof, insofar as those provisions are not
35 inconsistent with this section.

36 SEC. 4. Section 1794 of the Civil Code is amended to
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



1 pursuant to this subdivision.

2 (3) After the occurrence of the events giving rise to

3 the presumption established in paragraph (1) of

4 subdivision (e) of Section 1793.2, the buyer may serve

5 upon the manufacturer a written notice requesting that

6 the manufacturer comply with paragraph (2) of

7 subdivision (d) of Section 1793.2. If the buyer fails to

8 serve the notice, the manufacturer shall not be liable for

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, or

24 be transferred in the following manner:

25 (a) (1) All revenues, less refunds, derived under this

26 part at the 4¾ 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 4¾ 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 for appropriation pursuant to Section 99312 of the Public
2 Utilities Code.

3 (2) If the amount transferred pursuant to paragraph
4 (1) is less than one hundred ten million dollars
5 (\$110,000,000) in any fiscal year, an additional amount
6 equal to the difference between one hundred ten million
7 dollars (\$110,000,000) and the amount so transferred shall
8 be transferred, to the extent funds are available, as
9 follows:

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

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

16 (b) *The following percentage of the amount of all*
17 *revenues, less refunds, derived under this part*
18 *attributable to the sale, storage, use or other consumption*
19 *of aircraft jet fuel used in propelling aircraft the sale or*
20 *use of which in this state is subject to the tax imposed by*
21 *Part 2 (commencing with Section 7301) and which are*
22 *not subject to refund, shall be estimated by the State*
23 *Board of Equalization, with the concurrence of the*
24 *Department of Finance, and shall be transferred to the*
25 *Aeronautics Account in the State Transportation Fund:*

26 (1) *For the 1988-89 fiscal year, 50 percent of the*
27 *amount.*

28 (2) *For the 1989-90 fiscal year and each fiscal year*
29 *thereafter, 100 percent of the amount.*

30 (c) *After application of subdivisions (a) and (b), the*
31 *balance shall be transferred to the General Fund.*

32 ~~(e)~~

33 (d) The estimate required by ~~subdivision (a)~~
34 ~~subdivisions (a) and (b)~~ shall be based on taxable
35 transactions occurring during a calendar year, and the
36 transfers required by ~~subdivision (a)~~ ~~subdivisions (a) and~~
37 ~~(b)~~ shall be made during the fiscal year that commences
38 during that same calendar year. Transfers required by
39 paragraphs (1) and (2) of subdivision (a) ~~and subdivision~~
40 (b) shall be made quarterly.

1 SEC. 7. Section 3050 of the Vehicle Code is amended
2 to read:

3 3050. The board shall do all of the following:

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

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

17 (c) Consider any matter concerning the activities or
18 practices of any person applying for or holding a license
19 as a new motor vehicle dealer, manufacturer,
20 manufacturer branch, distributor, distributor branch, or
21 representative pursuant to Chapter 4 (commencing with
22 Section 11700) of Division 5 submitted by any person. A
23 member of the board who is a new motor vehicle dealer
24 may not participate in, hear, comment, advise other
25 members upon, or decide any matter considered by the
26 board pursuant to this subdivision that involves a dispute
27 between a franchisee and franchisor. After such
28 consideration, the board may do any one or any
29 combination of the following:

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

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

39 (3) Order the department to exercise any and all
40 authority or power that the department may have with



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

7 (d) Hear and consider, within the limitations and in
8 accordance with the procedure provided, a protest
9 presented by a franchisee pursuant to Section 3060, 3062,
10 3064, or 3065. A member of the board who is a new motor
11 vehicle dealer may not participate in, hear, comment,
12 advise other members upon, or decide, any matter
13 involving a protest filed pursuant to Article 4
14 (commencing with Section 3060).

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

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

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

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.*



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,



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 $4\frac{3}{4}$ -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)).



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
Recessed April 9, 1987
Recessed July 16, 1987
Recessed September 11, 1987
Recessed March 24, 1988
Recessed June 30, 1988
Reconvened January 5, 1987
Reconvened April 20, 1987
Reconvened August 17, 1987
Reconvened January 4, 1988
Reconvened April 4, 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. THOMAS HANNIGAN
Majority Floor Leader

HON. PHILLIP ISENBERG
Assistant Speaker pro Tempore

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
R. BRIAN KIDNEY
Chief Clerk

GUNVOR ENGLE
History Clerk



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.



ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 2057 (Tanner) - As Amended: April 28, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

SUBJECT

Warranties: new motor vehicles (lemon law).

DIGEST

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 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 judgement against a manufacturer who does not have a certified lemon law arbitration program. Specifically, it:

- continued -



- 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 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.
- 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, however, would be free to take restitution in place of a replacement vehicle.
- 4) Specifies what is 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 must 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 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.
 - 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) 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 and requires compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.

- continued -



- 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 judgement and the manufacturer does not maintain a qualified third party dispute resolution process as established by this chapter.

FISCAL EFFECT

This bill will result in unknown costs to the BAR to certify arbitration programs, fully offset by fees charged to vehicle manufactures and distributors. According to the Board of Equalization, enactment of the bill would result in insignificant administrative costs to the board.

COMMENTS

The purpose of this bill, sponsored by 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.

Similar legislation, AB 3611 (Tanner, 1986 Session), generally makes many of the same changes except for the provision in AB 2057 for treble damages. AB 3611 died in the Senate.

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.

- continued -



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.

Policy Questions

The committee may wish to consider the following:

- 1) Are treble damages necessary to ensure that arbitration programs used by manufacturers assist consumers in resolving the problems with their new car?
- 2) If BAR is going to have jurisdiction over the certification of arbitration programs dealing with new car warranty lemon law provisions, should they be given additional authority in the vehicle warranty area, where jurisdiction is presently unclear, since they will get more questions from consumers in that area?
- 3) Are the components of the qualified arbitration program fair to consumers and manufacturers alike? Should the components specify that if a dealer is present and allowed to speak, a consumer should be given equal time?

SUPPORT (verified 5/1/87)

CA Public Interest Research
Group (CalPIRG)

OPPOSITION

Automobile Importers of America
General Motors Corporation
Ford Motor Company



Bill Number Assembly Bill 2057 Date March 6, 1987
Author Tanner Tax Sales and Use
Board Position _____ Related Bills AB2050/SB71

BILL SUMMARY:

This bill would add Section 1793.25 to the Civil Code to require the board to 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 of the new motor vehicle upon receipt of satisfactory proof that the retailer of that motor vehicle has paid the sales tax to the state on the retail sale of that motor vehicle.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The bill would also add Chapter 20.5 to Division 3 of the Business and Professions Code to 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. It would also 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, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.



Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

A similar bill, AB 3611 of the 1985-86 session failed to pass the Legislature.

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. Enactment of this bill will result in insignificant administrative costs being incurred by the Board in notifying taxpayers and informing the board staff of the provisions of this bill.

Analysis Prepared by: *DH Jma* Darlene Hendrick 322-1637 April 3, 1987
 Contact: Margaret Shedd Boatwright *MSB JD* 322-2376 0238K

AP-2





Regional Governmental Affairs Office
Ford Motor Company

APR 15 1987

Suite 260 - 425 L Street
Sacramento, California 95814
Telephone: 916/442-0111

April 14, 1987

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

RE: Assembly Bill 2057
OPPOSE

Dear Assemblywoman Tanner:

Ford Motor Company is opposed to your Assembly Bill 2057, in its present form. Your bill would require manufacturers to establish an elaborate structure for certifying third-party dispute mechanisms, to be funded by fees imposed on manufacturers. Your bill further requires manufacturers to comply with 16 C.F.R. Part 703 as the rule existed in 1975.

The interests of California consumers may be served more effectively if manufacturers substantially complied with the new 16 C.F.R. Part 703 that is being rewritten currently in a negotiated rulemaking process in Washington, D.C. Eight of nine planned sessions have been held, with FTC staff members, representatives from industry, the offices of state attorneys general, the National Council of State Legislatures, and many consumer organizations working toward agreement on a new rule. It is clear that the rewritten rule will strengthen substantially the rights of consumers and the obligations of manufacturers regarding 703 mechanisms.

It is our understanding that part of the negotiated regulation is a prescribed certification process, along with a decertification process. The Federal Trade Commission has stated its intention to commit resources sufficient to assure appropriate attention to certification.

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(800) 666-1917

LEGISLATIVE INTENT SERVICE

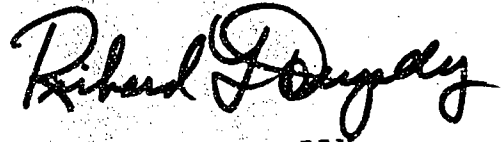


Page Two
Honorable Sally Wanner
April 14, 1987

Assembly Bill 2057

We believe it would be prudent for the State of California to avoid the increased bureaucratic structure described in AB 2057, at least until the summer of 1987 when a new 16 C.F.R. Part 703 will be available for review.

Sincerely,



RICHARD L. DUGAN
Regional Manager
Governmental Affairs

RLD:cme

cc: Assembly Governmental Efficiency and
Consumer Protection Committee
Governor's Office
California Chamber of Commerce
California Manufacturers Association

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-4

GENERAL MOTORS CORPORATION

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

APR 23 1987
APR 23 1987

April 23, 1987

Honorable Sally Tanner
California State Assembly
State Capitol Building, Room 4146
Sacramento, California 95814

Dear Sally:

This is to advise you that the General Motors Corporation must take an "oppose" position to your AB 2057 in its current form.

A primary concern with AB 2057 is that it mandates conformity with informal dispute settlement procedures as set forth in F.T.C. Rule 703 (16 C.F.R., Part 703). As you know, Rule 703 is presently being revised by a process of "negotiated rule making" by an Advisory Committee composed of industry representatives, state legislators (through the National Council of State Legislators), state Attorneys-General (coordinating through the National Association of Attorneys-General) and private consumer groups, including the Center for Auto Safety and Motor Voters.

Rule 703 was adopted in the late 1970s pursuant to the Magnuson-Moss Act, which declares it to be the policy of the United States to encourage warrantors to offer informal dispute settlement mechanisms. Warrantors who set up mechanisms that comply with the rule may require consumers to go through the mechanism before resorting to the courts under the Magnuson-Moss Act and most of the lemon laws.

For various reasons, the existing rule is thought to be inadequate. Warrantors find it to be too vague. Consumer protection enforcement officials sometimes feel that it provides insufficient procedural safeguards for consumers. The Federal Advisory Committee was formed by the FTC to revise the rule in ways that address these perceived deficiencies.

- Continued -

ARS

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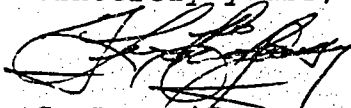


The Honorable Sally Tanner
April 15, 1987
Page two

The Advisory Committee has been meeting since September, 1986 for two days every month. The process is scheduled to be completed by June of this year. If the committee is able to agree on revisions, the FTC will promulgate the committee's suggestions. At this time, the committee has tentatively agreed that private dispute mechanisms must consider state lemon laws, and shall be permitted, but not required, to apply the laws. This represents a compromise between the consumer groups' desire to have the mechanisms enforce lemon laws, and the warrantors' desire to preserve uniformity and flexibility in their procedures. There is also preliminary consensus that the mechanisms must render decisions within 65 days.

AB 2057 prescribes a complex procedure for the certification and funding of arbitration panels. The anticipated federal regulatory changes will impact, significantly, the provisions of AB 2057. Consequently, we believe it would be in the best interest of all parties to avoid passing a bill, the subject of which may be addressed by federal regulation before the end of 1987.

Sincerely yours,



G. Lee Ridgeway, Western Regional Manager
Industry-Government Relations

GLR/rp

cc: Members, Assembly Governmental Efficiency
and Consumer Protection Committee

AP-6

AB 2057 (Janner)

4/27 5-7783 Annie Peters

~~Attt~~ left message re: amendments due & to call

does the same as 3611 except:

1) could choose to be certified but didn't have to if you told customers.

This bill mandates it if going to qualify. If not, can go to court + get triple damages.
Can

Florida has 3611 - 3 yrs. No one has gotten certified).

FTC Regs - most don't meet it. Oral testimony must be notified. Dealers present their point of view.

2) essence of amendments.

3611 - written by BAR / Elbrecht. That is rewritten

5/4/87 - Tanna's Office - Kathy.

9
CALPIRG

Opp
GM, etc. (same as I have)

AP.7



4/29. Lynn (CA/PIRG)

Enforcement Provisions to back up standards.

Advocating Amendments: (2)

1) Some bds have dealers or dealer reps on panel. Don't vote, but can discuss the case. Manuf. Dealers or their rep cannot participate unless consumers can equally.

2) FTC Regs. Follow up. Repair order. Follow up to see if repair attempt work.

Why treble damages:

- 1) economic incentive
- 2) easier to get an attorney.



5/11 Sara Michaels.

2057

- ^{tip} treble damages ought to be associated w/ willful wrong doing rather than not having a certified pgm. Relationship of damages to the problem.
- Amer. Arb. & Toyota may be working out a new program.
- hard for a small manuf. BBB too expensive. philosophy is customer is always right.
- 703 - change date so can conform.
- concern about treble damages - put it over for two weeks to try to work it out.



AG -

Simon law

not taken a position on the bill.

Ron Reiter

5/1/87 Kathy Runkle, BAR

(Marty Dyer) need more power so that dealers have to listen to what BAR says - they need to be able to have official sanctions. Want to get in to the warranty area.

(Kathy) - opposed because BAR wants authority to handle new car warranty complaints, and service contract problems.

Clouded jurisdiction now. Initially a repair problem, but if cars getting jerked around by new car motor vehicle board. If any jurisdiction, needs to be complete

There only 3 or 4 ^{dispute} processes now.
Process is just a paperwork thing



April 27, 1987

The Honorable Sally Tanner
State Capitol
Sacramento, CA. 95814

SUBJECT: Opposition to AB 2057 Relating to the Lemon Law

Dear Sally,

On behalf of the Automobile Importers of America, I am writing in opposition to your AB 2057 which will be heard in the Assembly Committee on Government Efficiency and Consumer Protection on May 5, 1987.

As amended, AB 2057 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. Under both federal rules and state law, Lemon Law arbitration programs have been created on a voluntary basis by new car manufacturers to expedite consumer complaints. Your AB 2057 changes the voluntary nature of these programs by automatically awarding consumers with a penalty of double the damages and attorney fees if the manufacturer does not have a certified program and the consumer wins the Lemon Case in court. By guaranteeing attorney fees and a potential windfall, AB 2057 creates an improper incentive for consumers to hire an attorney to go to court over procedural issues. These awards will serve as a strong incentive for consumers to reject settlements offered by manufacturers and additional court congestion will occur.

Treble damages and awards of attorney fees are usually associated with gross and willful wrongdoing. AB 2057 establishes a dangerous precedent by making consumers eligible for this financial windfall by the sole fact that a new car manufacturer may not have a certified Lemon Law arbitration program. AB 2057 goes even farther by allowing this windfall for consumers who can prove that the manufacturer's program did not in every instance comply with federal and state rules and guidelines.



The Honorable Sally Tanner
April 27, 1987
Page two

AB 2057 is contrary to the spirit of the California Lemon Law by giving disgruntled car buyers a tremendous incentive to go to court and to bypass voluntary arbitration programs. In addition, it penalizes some smaller auto manufacturers who don't participate in Lemon Law programs because it is the manufacturer's policy to settle all disputes to the consumers' satisfaction.

As you know, most new car warranty problems are settled satisfactorily between consumers and new car manufacturers. It is estimated that only a small percentage of the cases go to arbitration; most are settled informally or through mediation. The Automobile Importers of America feel that passage of AB 2057 will be contrary to this process. For this reason, we must oppose your bill.

Sincerely,

Sarah Michael

Sarah C. Michael, representing the
Automobile Importers of America



AP-12

April 29, 1987

Assembly Committee on Governmental
Efficiency & Consumer Protection
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

I am writing to urge your support for AB 2057 (Tanner) and the strengthening amendments suggested in the attached factsheet. This legislation will amend the existing new car Lemon Law. It will be considered in the Governmental Efficiency and Consumer Protection Committee on Tuesday, May 5.

The Lemon Law was passed in 1982 in order to provide remedies for consumers who had purchased a defective new car. It amended existing warranty law to specifically define the situation in a which a new car could be called a "lemon". The law requires that in the case of an alleged lemon vehicle, consumers and manufacturers use an arbitration process to resolve the dispute before resorting to costly and protracted litigation.

Unfortunately, there have been serious problems. Research done by CALPIRG in 1986 documents a consistent pattern of problems with the arbitration process -- ranging from lack of training of arbitrators to unfair reimbursements for consumer costs. For many consumers, the arbitration process has not provided a final resolution for their dispute and in fact has been an extra hurdle to be crossed.

AB 2057 addresses this issue by establishing strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It also allows consumers who go to court, and win, to recover damages if the manufacturer failed to maintain a certified arbitration program.

Enclosed you will find a factsheet which details the problems with the current law's arbitration processes and outlines how AB 2057 and the strengthening amendments will solve those problems.

I hope that we can count on your vote at the bill's hearing on Tuesday. If you have any questions or would like more information, please feel free to call me at 448-4516.

Sincerely,

Lynn Nesselbush
Lynn Nesselbush
Legislative Advocate

AP-13

FACT SHEET ON AB 2057 (LEMON LAW II)BACKGROUND

In 1982, legislation authored by Assemblywoman Sally Tanner amended the Song-Beverly Warranty Act to clarify what is meant by a "reasonable number of attempts" to repair a new motor vehicle. This amendment, known as the "Lemon Law," establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The Lemon Law amendment went into effect in January, 1983 and applies to new motor vehicles that are primarily for personal or family use. The Lemon Law does not apply to used cars.

The Lemon Law requires consumers and manufacturers to use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation in resolving their disputes.

Unfortunately, for many consumers, the arbitration process is just another hurdle to cross rather than a final resolution of the problem. AB 2057 is designed to make the arbitration process work by clarifying certain provisions of the law and addressing the following problems:

PROBLEM #1: Arbitration Panels Ignore Lemon Law Provisions & FTC Regs.

Arbitration programs often do not use the criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. The Lemon Law defines a "lemon" as a vehicle which has had four or more repair attempts on the same problem, or spends 30 days in the shop for any number of problems, during its first year or 12,000 miles. Some do not even train their arbitrators to use or understand the Lemon Law.

The arbitration panels do not comply with Federal Trade Commission (FTC) guidelines for third party dispute resolution programs. These guidelines set a 40 day limit for decisions and require that the boards operate in a fair and impartial manner.

The FTC guidelines, however, do not specify whether or not dealers may participate in the arbitration hearings. In the case of the Ford and Chrysler boards, dealers (and sometimes company representatives) often participate in discussions which lead to decisions. In addition, these same two boards generally do not allow consumers any oral presentation at the hearings.

AB 2057 (Tanner) requires that the arbitration programs be certified by the Bureau of Automotive Repair (BAR) as meeting the requirements of the Lemon Law and FTC arbitration guidelines. Further, the bill

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allows for the recovery of a civil penalty of two times the amount of actual damages if the manufacturer fails to maintain a qualified arbitration program as defined in the previously mentioned standards.

The bill also requires that arbitrators be trained in the application of the Lemon Law's refund and replacement provisions.

In addition, the bill should be amended to clarify that dealer and/or manufacturer participation in any form is not acceptable unless the consumer is given a chance to participate equally.

PROBLEM #2: Arbitration Panels Rely on Manufacturer's Experts

Many arbitration panels rely on mechanics supplied by the manufacturer to evaluate the car in question. These manufacturers have an obvious conflict of interest.

AB 2057 requires that manufacturers provide an inspection by an independent automotive expert at the request of the arbitrator(s).

PROBLEM #3: Lack of Follow Up on Arbitration Decisions

The FTC regulations, referred to in the Lemon Law, provide general guidelines for following up on decisions which order another repair attempt. Unfortunately, the guidelines provide for a follow up to make sure that the repair attempt occurred, but not follow up to make sure the repair attempt corrected the problem. This is a serious gap in the requirements given the frequent occurrence of a another repair attempt as a decision.

AB 2057 does not address this problem.

The bill should be amended to include specific requirements for how arbitration boards should follow up on repair attempt decisions.

PROBLEM #4: Consumers' Costs Are Not Reimbursed

After ruling for the consumer, some arbitration boards insist that the consumer take a replacement car even though they have lost confidence in the manufacturer and would prefer a refund, or vice versa. Furthermore, consumers often are required to pay substantial costs such as sales taxes and license fees on the lemon car, or must pay rental car charges and towing fees incurred because of the defective automobile.

AB 2057 includes provisions that give the buyer the option of rejecting a replacement vehicle in favor of a refund, and specify that the manufacturer is responsible for sales taxes and license and fees as well as expenses incurred in connection with the repair of the vehicle and for towing and rental.



PROBLEM #5: 'Deduction For Use' Provision Abused

When the manufacturer reimburses the consumer the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to the discovery of the problem. Arbitration panels, however, often recommend an unreasonably high deduction by using commercial car rental rates and an unreasonably late date as the time at which the buyer's use is considered to be ended.

AB 2057 defines a specific formula to be used by the arbitrator to determine the amount of 'deduction for use'. The formula assumes the useful life of the car to be 120,000 miles and allows a percentage deduction based on the value of the car and the number of miles driven before the first time the car is taken in for repair.

PROBLEM #6: Consumers Not Protected From Used Lemons

There are no provisions in current law for what manufacturers may do with lemon vehicles which have been bought back from consumers. Without regulation, a manufacturer may resell the vehicle as a used car without informing consumers of the vehicle's repurchase history.

AB 2057 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.

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5/7 - submitted amendment

AB 2057.

② Lemon law -

* get FTC minimum reqs.

Donna Selbrick.

Song Beverly is a lemon law for Calif.

AG - Al Sheldon.

Cons. must show no cert. pgr; if manuf. can rebut that it is a lemon, then don't have to pay. Incentive same as some in Song Beverly (willfully manuf. not complied)

Amendment

up to 3 times offered by Delaine
author -- no, this is already part of Song Beverly.

Opposition:

1) Lee Ridgeway - GM. - contracts w/ BBS thru out 50 states; 1,000 arbitrators
200 attnys. Should they misapply then would trigger triple
damages. - FTC Consent Order until 1990. Must have an arb pgr
in 50 states; plan has to be informal; if cons wants strict letter of law,
then consumer must go to court. GM went to court w/ State of NY.
power trains. | no one is covered.
power train + other types of problems.

*? Can consumer have their lawyer at the arbitration.

(Sher) "they must consider + attempt to provide"

Janner accepted Pg 17 l 28. "willfully" * * *

Leg Counsel
req. #

- Sara Michaels.

- Richard Dugally Ford. - Cons. appeals running 34.7 days.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



May 21, 1987

Assembly Ways and Means Committee
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

I am writing to urge your support for AB 2057 (Tanner) -- legislation to give California's new car Lemon Law a tune-up. AB 2057 recently received a "do pass" from the Assembly Committee on Governmental Efficiency and Consumer Protection (5-0) and was referred to the Assembly Ways and Means Committee.

The Lemon Law was passed in 1982 in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in which a new car qualifies as a "lemon". The law requires that in the case of an alleged lemon vehicle, consumers must first use a "qualified" arbitration process to resolve the dispute before resorting to costly and protracted litigation.

Unfortunately, there have been serious problems. Research done by CALPIRG in 1986 documents a consistent pattern of problems with the arbitration process -- ranging from lack of training of arbitrators to unfair reimbursements for consumer costs.

AB 2057 addresses this issue by establishing strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It also allows consumers who win in court to recover damages if the manufacturer failed to maintain a certified arbitration program.

AB 2057 addresses the problems with the Lemon Law at little or no real cost to the state. The costs to the Bureau of Automotive Repair for certifying and de-certifying the arbitration programs will be fully covered by an annual fee charged to manufacturers.

Enclosed you will find a factsheet which details the problems with the current law's arbitration programs and explains how AB 2057 will solve those problems.

I hope that we can count on your support for this bill when it is heard in the Ways and Means Committee. If you have any questions or would like more information, please feel free to call me at 448-4516.

Sincerely,

Lynn Nesselbush
Legislative Advocate



AP-18

FACT SHEET ON AB 2057 (Tanner) -- LEMON LAW II

BACKGROUND

In 1982, legislation authored by Assemblywoman Sally Tanner was passed in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in which a new car qualifies as a "lemon". This law defines a "lemon" as a vehicle which has had four or more repair attempts made on the same problem or has spent 30 days in the shop during its first year or 12,000 miles.

The law requires that in the case of an alleged lemon vehicle, consumers must first use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation to resolve their dispute.

THE CURRENT SITUATION

The arbitration programs, either operated or sponsored by manufacturers, are not providing a fair and impartial process for consumers seeking relief from defective new cars. These programs do not comply with FTC minimum guidelines for third party dispute resolution processes nor do they abide by the provisions of the California Lemon Law.

There has been ample time in the last five years since the Lemon Law was enacted for manufacturers to operate arbitration programs which are fair. They have not done so. For many consumers, the arbitration process, rather than providing a final resolution to their problem, has instead become an extra hurdle to cross.

A report released by CALPIRG (August 1986) documented some of the problems faced by consumers using the arbitration process:

Problem #1: Arbitration Panels Ignore Lemon Law Provisions & FTC Regulations

Arbitration programs often do not use the criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. Some do not even train their arbitrators to use or understand the Lemon Law. Many consumers have received decisions calling for further inspections, diagnosis, repairs, extended warranties, or simply nothing at all -- despite the fact that they had already had their car repaired numerous times.

The arbitration process often takes far longer than the 40-60 days allowed in the FTC 703 regulations. The process becomes a continuation of an already interminable and frustrating experience which requires the consumer's aggressive persistence.

Problem #2: Arbitration Panels Rely on Manufacturer's Experts

Many arbitration panels rely on mechanics supplied by the



AP-19

manufacturer to evaluate the car in question. These manufacturers have an obvious conflict of interest.

Problem #3: Lack of Follow Up on Arbitration Decisions

Despite the fact that arbitration boards often grant decisions calling for "one more repair attempt," they do not follow up to ensure that the repair attempt resolves the problem. For the consumer in these instances, the arbitration process, although having taken significant time and energy, moves them no closer to resolving their dispute.

Problem #4: Consumers' Costs Are Not Reimbursed

Consumers often are forced to incur expenses such as towing costs and rental car fees as a result of their inoperative vehicle and the subsequent repair process. These expenses as well as tax and license fees are often not reimbursed.

Problem #5: 'Deduction For Use' Provision Abused

When the manufacturer reimburses the consumer for the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to the discovery of the problem. Arbitration panels, however, often recommend an unreasonably high deduction by using commercial car rental rates and an unreasonably late date as the time at which the buyer's use is considered to be ended.

THE SOLUTION

AB 2057 addresses these problems by outlining strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It allows consumers who win in court to recover a civil penalty of up to two times the cost of actual damages if the manufacturer fails to maintain a certified arbitration program.

These penalty provisions provide the missing enforcement necessary to make the Lemon Law work. It can only be invoked if a consumer has a lemon and is forced to use legal action to resolve his or her dispute. This gives manufacturers a strong incentive to resolve legitimate disputes either through a certified arbitration program or through settlement; consequently, it is much more likely that consumers will be able to resolve their disputes without resorting to litigation.

In addition, the bill should be amended to: clarify that dealer and/or manufacturer participation in the decision-making process in any form is not acceptable unless the consumer is given a chance to participate equally; and, to include specific requirements for how arbitration boards should follow up on repair attempt decisions.



add'l authors amendments. (14)

discussion w/
AG 8/25/87
Sue

may recover up to 2x + actual costs and is ~~up~~
at the discretion

major

add "substantial" (compliance) (addresses industry
concern that they not be liable for
anything but patterns)

p. 14 softens take into consideration ~~into~~ --
taking into account rather than rendering
decision based upon.
(I) also deleted.

Aug 17 amendments.

#1 if manuf has a pgm which is qualified +
~~cons doesn't file decision~~ Manuf can
then not liable for treble damages.
Incentive to qualify.
Big change

#2 ~~has any amount of time~~
cons. must notice manuf.

#3 another chance not to file a lawsuit

#4 if the buyer establishes a willful violation
excludes other remedies.

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AB2057ca as amended 8/25/87

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.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



- continued -

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AB 2057

As amended by the Assembly, this bill, effective July 1, 1988:

- 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; 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) 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 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.
- 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, clarifies that dealer and/or manufacturer participation in

- continued -

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the decision-making 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) 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 if the manufacturer has a qualified third party dispute resolution program which "substantially complies" with the specified criteria. This is to provide the manufacturer with incentive to qualify their program and removes the ability of the consumer to sue the manufacturer over a program detail which is not in compliance although the program itself is in substantial compliance.
- 3) Exempt the manufacturer from liability for treble damages if the consumer does not provide the manufacturer with written notice requesting the manufacturer to comply with the provisions of this bill ~~and~~ gives the manufacturer 30 days to comply with the written notice before the manufacturer could be held liable for treble damages.
- 4) Prevent the consumer from collecting treble damages simultaneously for violations of different provisions of the law.

- continued -

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- 5) Provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair (BAR) if they are in "substantial compliance" with the specified criteria.
- 6) Specify that BAR shall be the entity to conduct the survey to measure customer satisfaction and to identify violations of the lemon law.
- 7) Reduce the information which applicants for a license ~~from the NMVB~~ must provide to the NMVB to only the number of motor vehicles sold, leased, or otherwise distributed in California during the proceeding year ~~delete the phrase provision which required applicants to provide any other information that the NMVB may require.~~
- 8) Require the arbitration panel to take into account all legal and equitable factors in rendering their decision.
- 9) Allow an employee, agent, or ^ydealer 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 clarifies that if anyone (e.g. ~~technicians or others who would act as~~ an industry expert) participates substantively in the merits of any dispute ~~with the arbitrator~~, the buyer is allowed to participate also.
- 10) Delete the requirement that if the arbitration panel decides ^{must} that another repair attempt must be made, another panel 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.}
~~Remove the circumstances under which~~
- 11) Specify that only under the circumstance where a manufacturer has taken a car back which is determined under the definition in the lemon 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~~ for one year.
- 12) ~~Double join AB 2057 with AB 1367 (Tanner) which specifies that remedies to buyers with damaged goods include the right of replacement or reimbursement.~~ ^{Add the provisions of} to AB 2057 so the bills do not have to be double joined. ^{AB 1367}
- 13) Double join AB 2057 with AB 276 (Eaves) which relates to rates and refunds of aircraft jet fuel but effects the same section of the Revenue and Tax Code ~~as~~ AB 2057.
- 14) Appropriate ^{a loan of} \$25,334 to the DMV ^{from the New Motor Vehicle Board Account} to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers ^{to be repaid from the Certification Account of the Automotive Repair Fund.}

FISCAL EFFECT

- continued -

AP-25

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.



- continued -

AP-26

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.
- 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.
- 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) *All parties* The senate amendments are the result of negotiations with all ^{the} affected parties. The major impact is the removal of mandatory treble damages under certain circumstances and the ~~fact~~ principle that an ~~ar~~ auto arbitration ~~which~~ cannot be decertified ~~to result~~ or cannot be ~~void~~ ^{law} ~~righted in a suit~~ the subject of a lawsuit ~~to~~ because of a ~~detail~~ program detail if the program ~~is~~ itself is in substantial compliance.

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AP-27

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 if the manufacturer has a qualified third party dispute resolution program which "substantially complies" with the specified criteria.
- 3) Exempt the manufacturer from liability for treble damages if the consumer does not provide the manufacturer with written notice requesting the manufacturer to comply with the provisions of this bill and gives the manufacturer 30 days to comply with the written notice before the manufacturer could be held liable for treble damages.
- 4) Prevent the consumer from collecting treble damages simultaneously for violations of different provisions of the law.
- 5) Provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair (BAR) if they are in "substantial compliance" with the specified criteria.
- 6) Specify that BAR shall be the entity to conduct the survey to measure customer satisfaction and to identify violations of the lemon law.
- 7) 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."
- 8) Require the arbitration panel to take into account all legal and equitable factors in rendering their decision.
- 9) 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.
- 10) Delete the requirement that if the arbitration panel decides that another 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.
- 11) Specify that only under the circumstance where a manufacturer has taken a car back which is determined under the definition in the lemon 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.

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- continued -

AB 2057



- 12) Add the provisions of AB 1367 (Tanner) which specify that remedies to buyers with damaged goods include the right of replacement or reimbursement.
- 13) Double join AB 2057 with AB 276 (Eaves) which relates to rates and refunds of aircraft jet fuel but effects the same section of the Revenue and Tax Code as AB 2057.
- 14) Appropriate a loan of \$25,334 to the DMV from the New Motor Vehicle Board Account to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers.

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.
- 4) DMV would incur program start-up costs of \$25,000 in 1987-88, decreasing to \$7,000 annually thereafter. The bill contains an appropriation therefor.

Implement an auto arbitration certification program.



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- continued -

AB 2057

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.
- 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 mandatory treble damages under certain circumstances and the addition of the concept of substantial compliance of an auto arbitration program to mitigate against actions taken against a program based on details.



Legislative Analyst
August 28, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Senate August 25, 1987
1987-88 Session

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) to implement a dispute resolution certification program; beginning in 1988-89, costs would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program to certify third party dispute resolution processes for automobile warranty disputes. The certification program would become operative July 1, 1988 and would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill also would change current law pertaining to vehicle warranty procedures and restitution.

Specifically, the bill:

- o Authorizes BAR to revoke or suspend any arbitration program if it does not meet specified standards and requires the bureau to (1) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (2) provide the Legislature with a biennial report evaluating the effectiveness of the program.

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- o Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. These fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund.
- o Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

We estimate that the BAR would incur program start-up costs of up to \$153,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$25,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8

Ernie Peters 9/4 -
 LHO Will stick to it in writing
 pgm would begin Jan 1
 but \$ July 1. So
 operative date of pgm
 amendment July 1.
 "Might be beginning work early."
 would be like saying bill
 starts in Jan but really will
 start in Oct or so.
 Tanner contends
 there are no costs
 before July.
 1367 - Senate Finance
 file. Will take it
 off. Referred to
 Senate Appropriations
 \$4 mil surplus.

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AP-32

Janner. (

- When buy back a lemon pay back sales tax + unused license fee.

Greene - (dealer ~~paid~~)

- when it gets back to

- deduct from next sales tax installment deduct amt from board of equalization.

- same for registration fee (send to DMV) DMV opposed to bill.

Janner

- manuf resp. for entire thing (not dealer)

④ - after 1 repair attempt. Cases where manuf says we'll take it back. Not a lemon under lemon law.

- when a car determined to be a lemon pursuant to law. + manuf bought back cannot sell unless disclose.

transferred to a manuf as a result of a "nonconformity" - well there could be a number of nonconformities.

AP-33



9/2/87 - Jay de Furia on the amendments.

- ① not to require them to apply lemon law in every case which comes before them like a court of law. Reg'd to take it into consideration vs. reg'd to apply reach a decision strictly in accordance w/ (training now required)
- ② Ford & Chrysler have a dealer or manuf rep. Ford has a dealer member who decides on lemon cases (1 on 3). but not if they are party to a dispute -- If you want general information from people in the room, they make answer questions but not as to the merits of the particular case unless the consumer is allowed to speak on the case. Dealer can decide the dispute if not a party. Used to say cannot participate.
- ③ Try to avoid situation where a repair attempt doesn't solve the problem. Would just start a new case. Avoid transgressing FTC reg's of 40 days. Goes to court.

① Application of all the principles. Overall is fair. does not require absolutely strict adherence. Adds all legal & equitable circumstances. Consistent w/ law cuts both ways. If good gripe but no law-work in field in fairness.

AP-34



Sept. 1
dated Sept. 4

SUMMARY OF AMENDMENTS - AB 2057 (TANNER)

- 1) Amendments 1-9. AB 2057 was amended in the Senate Judiciary Committee to provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair if they are in "substantial compliance" with a set of specified criteria. Amendments 1-9 are conforming amendments that were not made in the Judiciary Committee.

- 2) Amendments 10 and 12 ("SEC. 9." addition). These amendments add the provisions of AB 1367 (Tanner) to AB 2057 so the bills will not have to be double-joined. AB 1367 has no opposition and was passed out of Senate Appropriations under Rule 28.8.

- 3) Amendments 11 and 12 ("SEC. 10." addition). These amendments double-join the bill with AB 276 (Eaves).

- 4) Amendment 12 ("SEC. 8." addition). This amendment appropriates \$25,334 to the Department of Motor Vehicles to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers. AB 2057 imposes a fee of up to \$1 on each new motor vehicle sold in the state. The fee revenues will fund the certification program created by the bill.

The appropriation is from the unappropriated surplus of the so-called "New Motor Vehicle Board Account" in the Motor Vehicle Account. The New Motor Vehicle Board is not opposed to the appropriation since it will be repaid in the next fiscal year from fee revenues that will be collected starting July 1, 1988.

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AP-35

Bill Number Assembly Bill 2057 Date March 6, 1987
Author Tanner Tax Sales and Use
Board Position _____ Related Bills AB2050/SB71

BILL SUMMARY:

This bill would add Section 1793.25 to the Civil Code to require the board to 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 of the new motor vehicle upon receipt of satisfactory proof that the retailer of that motor vehicle has paid the sales tax to the state on the retail sale of that motor vehicle.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The bill would also add Chapter 20.5 to Division 3 of the Business and Professions Code to 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. It would also 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, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.

Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

A similar bill, AB 3611 of the 1985-86 session failed to pass the Legislature.

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. Enactment of this bill will result in insignificant administrative costs being incurred by the Board in notifying taxpayers and informing the board staff of the provisions of this bill.

Analysis Prepared by: Darlene Hendrick 322-1637
 Contact: Margaret Shedd Boatwright 322-2376

April 3, 1987
 0238K

JAMES B. HORTON
ADAM MACKAY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY R. LOURIMORE
EDWARD H. PURCELL
JOHN T. STUBBAKER

DAVID D. ALYSS
JOHN A. COBENE
C. DAVID DICHERSON
ROBERT CALLEN DUFFY
ROBERT D. GROSS
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8011 STATE BUILDING
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(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

April 16, 1987

Assemblywoman Sally Tanner

A.B. 2057 - Conflict

MARTIN L. ANDERSON
PAUL ANTILLA
DANA S. APPLING
CHARLES C. ASBELL
LIBERTY M. P. BELLET
ANGELA I. BUDD
ELLEN J. BUNTON
HENRY J. CONTRERAS
BEN E. DALE
JEFFREY A. DELAND
CLYTON J. GIBNEY
LAWRENCE G. FERN
SHARON R. FISHER
JOHN FORBETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GIBBS
THOMAS R. HEUER
MICHAEL J. KIRSTEN
L. DOUGLAS KINNEY
VICTOR MOZELSKI
EVE S. KROTZINGER
RONALD S. LOPEZ
JAMES A. MARBALA
PETER MELNICOE
ROBERT G. MILLER
JOHN A. MOSEY
VERNE L. OLIVER
EUGENE L. PARR
MARGUERITE ROTH
MICHAEL B. SALERNO
MARY SHAW
RUSSELL L. SPARKING
WILLIAM M. STARK
MARK FRANKLIN TERRY
JEFF THOMAS
PHILIP TORRES
MICHAEL W. UFFON
RICHARD E. WEBBERG
DANIEL A. WITZMAN
THOMAS D. WHELAN
JANA T. WINTERBOYS
CHRISTOPHER ZINKLE
DEPUTIES

The above measure, introduced by you, which is now set for hearing in the Assembly Governmental Efficiency and Consumer Protection Committee appears to be in conflict with the following other measure(s):

A.B. 2050-Tanner	S.B. 71-Greene, Leroy
A.B. 282-Statham	S.B. 205-Kopp
A.B. 343-Cortese	S.B. 263-Rogers
A.B. 373-Bane	S.B. 1028-Morgan
A.B. 410-Frazer	S.B. 1236-Garamendi
A.B. 735-McClintock	S.B. 1349-Nielsen
A.B. 901-Mountjoy	
A.B. 1635-Brown, Dennis	

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

LEGISLATIVE INTENT SERVICE (800) 666-1917



Regional Governmental Affairs Office
Ford Motor Company

APR 15 1987

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

April 14, 1987

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

RE: Assembly Bill 2057
OPPOSE

Dear Assemblywoman Tanner:

Ford Motor Company is opposed to your Assembly Bill 2057, in its present form. Your bill would require manufacturers to establish an elaborate structure for certifying third-party dispute mechanisms, to be funded by fees imposed on manufacturers. Your bill further requires manufacturers to comply with 16 C.F.R. Part 703 as the rule existed in 1975.

The interests of California consumers may be served more effectively if manufacturers substantially complied with the new 16 C.F.R. Part 703 that is being rewritten currently in a negotiated rulemaking process in Washington, D.C. Eight of nine planned sessions have been held, with FTC staff members, representatives from industry, the offices of state attorneys general, the National Council of State Legislatures, and many consumer organizations working toward agreement on a new rule. It is clear that the rewritten rule will strengthen substantially the rights of consumers and the obligations of manufacturers regarding 703 mechanisms.

It is our understanding that part of the negotiated regulation is a prescribed certification process, along with a decertification process. The Federal Trade Commission has stated its intention to commit resources sufficient to assure appropriate attention to certification.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Page Two
Honorable Sally Tanner
April 14, 1987

Assembly Bill 2057

We believe it would be prudent for the State of California to avoid the increased bureaucratic structure described in AB 2057, at least until the summer of 1987 when a new 16 C.F.R. Part 703 will be available for review.

Sincerely,



RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Assembly Governmental Efficiency and ✓
Consumer Protection Committee
Governor's Office
California Chamber of Commerce
California Manufacturers Association

GENERAL MOTORS CORPORATION

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

APR 23 1987
APR 20 1987

April 23, 1987

Honorable Sally Tanner
California State Assembly
State Capitol Building, Room 4146
Sacramento, California 95814

Dear Sally:

This is to advise you that the General Motors Corporation must take an "oppose" position to your AB 2057 in its current form.

A primary concern with AB 2057 is that it mandates conformity with informal dispute settlement procedures as set forth in F.T.C. Rule 703 (16 C.F.R., Part 703). As you know, Rule 703 is presently being revised by a process of "negotiated rule making" by an Advisory Committee composed of industry representatives, state legislators (through the National Council of State Legislators), state Attorneys-General (coordinating through the National Association of Attorneys-General) and private consumer groups, including the Center for Auto Safety and Motor Voters.

Rule 703 was adopted in the late 1970s pursuant to the Magnuson-Moss Act, which declares it to be the policy of the United States to encourage warrantors to offer informal dispute settlement mechanisms. Warrantors who set up mechanisms that comply with the rule may require consumers to go through the mechanism before resorting to the courts under the Magnuson-Moss Act and most of the lemon laws.

For various reasons, the existing rule is thought to be inadequate. Warrantors find it to be too vague. Consumer protection enforcement officials sometimes feel that it provides insufficient procedural safeguards for consumers. The Federal Advisory Committee was formed by the FTC to revise the rule in ways that address these perceived deficiencies.

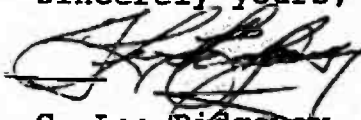
- Continued -

The Honorable Sally Tanner
April 15, 1987
Page two

The Advisory Committee has been meeting since September, 1986 for two days every month. The process is scheduled to be completed by June of this year. If the committee is able to agree on revisions, the FTC will promulgate the committee's suggestions. At this time, the committee has tentatively agreed that private dispute mechanisms must consider state lemon laws, and shall be permitted, but not required, to apply the laws. This represents a compromise between the consumer groups' desire to have the mechanisms enforce lemon laws, and the warrantors' desire to preserve uniformity and flexibility in their procedures. There is also preliminary consensus that the mechanisms must render decisions within 65 days.

AB 2057 prescribes a complex procedure for the certification and funding of arbitration panels. The anticipated federal regulatory changes will impact, significantly, the provisions of AB 2057. Consequently, we believe it would be in the best interest of all parties to avoid passing a bill, the subject of which may be addressed by federal regulation before the end of 1987.

Sincerely yours,



G. Lee Ridgeway, Western Regional Manager
Industry-Government Relations

GLR/rp

cc: Members, Assembly Governmental Efficiency
and Consumer Protection Committee



AB 2057 (Jenner)

1/27 5-7783 Annie Peters

~~Added~~ left message re: amendments due to call

does the same as 3611 except:

1) could choose to be certified but didn't have to if you told customers

This bill mandates it if going to qualify. If not, can go to court + get treble damages.

Can

Florida has 3611 - 3 yrs. (None has gotten certified).

FTC Regs - most don't meet it. Oral testimony, must be notified. Dealers present their point of view.

2) essence of amendments.

3611 - written by BAR / Elbrecht. That is rewritten.

5/4/87 - Tanner's Office - Kathy.

S

CALPIRG

OPP

GM, etc. (same as I have)

#29. Lyon (CAPIRE)

Enforcement Provisions to back up standards.

Advocating Amendments: (2)

1) Some bds have dealers or dealer reps on panel. Don't vote, but can discuss the case. Manuf. Dealers or their rep cannot participate unless consumers can equally.

2) FTC Regs. Follow up. Repair order. Follow up to see if repair attempt work.

Why treble damages:

1) economic incentive

2) easier to get an attorney.

5/11 Sara Michaels. 2057

- treble damages ought to be associated w/ willful wrong doing. rather than just having a certified ppm. Relationship of damages to the problem.
- Amer. Auto. & Toyota may be working out a new program.
- hard for a small manuf. (BOS to expensive). philosophy is customer is always right.
- 703 - change date so can conform.
- concern about treble damages - put it over for two weeks to try to work it out.

LEGISLATIVE TEST SERVICE (800) 665-1917

AG -

Lemon Law

not taken a position on the bill.

Ron Reiter

5/1/67 Kathy Runkle, BAR

(Marty Dyer) - need more power so that dealers have to listen to what BAR says - they need to be able to have official sanctions. Want to get into the warranty area.

(Kathy) - opposed because BAR wants authority to handle new car warranty complaints, and service contract problems.

Clouded jurisdiction now. Initially a repair problem, but if cars getting jerked around by new car motor vehicle board. If any jurisdiction, needs to be complete

There only 3 or 4 ^{dispute} processes now.
Process is just a paperwork thing

LEGISLATIVE
ADVOCATES

SACRAMENTO
CALIFORNIA 95814

TELEPHONE
916 444-6034

April 27, 1987

The Honorable Sally Tanner
State Capitol
Sacramento, CA. 95814

SUBJECT: Opposition to AB 2057 Relating to the Lemon Law

Dear Sally,

On behalf of the Automobile Importers of America, I am writing in opposition to your AB 2057 which will be heard in the Assembly Committee on Government Efficiency and Consumer Protection on May 5, 1987.

As amended, AB 2057 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. Under both federal rules and state law, Lemon Law arbitration programs have been created on a voluntary basis by new car manufacturers to expedite consumer complaints. Your AB 2057 changes the voluntary nature of these programs by automatically awarding consumers with a penalty of double the damages and attorney fees if the manufacturer does not have a certified program and the consumer wins the Lemon Case in court. By guaranteeing attorney fees and a potential windfall, AB 2057 creates an improper incentive for consumers to hire an attorney to go to court over procedural issues. These awards will serve as a strong incentive for consumers to reject settlements offered by manufacturers and additional court congestion will occur.

Treble damages and awards of attorney fees are usually associated with gross and willful wrongdoing. AB 2057 establishes a dangerous precedent by making consumers eligible for this financial windfall by the sole fact that a new car manufacturer may not have a certified Lemon Law arbitration program. AB 2057 goes even farther by allowing this windfall for consumers who can prove that the manufacturer's program did not in every instance comply with federal and state rules and guidelines.

The Honorable Sally Tanner
April 27, 1987
Page two

AB 2057 is contrary to the spirit of the California Lemon Law by giving disgruntled car buyers a tremendous incentive to go to court and to bypass voluntary arbitration programs. In addition, it penalizes some smaller auto manufacturers who don't participate in Lemon Law programs because it is the manufacturer's policy to settle all disputes to the consumers' satisfaction.

As you know, most new car warranty problems are settled satisfactorily between consumers and new car manufacturers. It is estimated that only a small percentage of the cases go to arbitration; most are settled informally or through mediation. The Automobile Importers of America feel that passage of AB 2057 will be contrary to this process. For this reason, we must oppose your bill.

Sincerely,

Sarah Michael

Sarah C. Michael, representing the
Automobile Importers of America

LEGISLATIVE INQUIRY SERVICE (800) 666-1917

April 29, 1987

Assembly Committee on Governmental
Efficiency & Consumer Protection
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

I am writing to urge your support for AB 2057 (Tanner) and the strengthening amendments suggested in the attached factsheet. This legislation will amend the existing new car Lemon Law. It will be considered in the Governmental Efficiency and Consumer Protection Committee on Tuesday, May 5.

The Lemon Law was passed in 1982 in order to provide remedies for consumers who had purchased a defective new car. It amended existing warranty law to specifically define the situation in a which a new car could be called a "lemon". The law requires that in the case of an alleged lemon vehicle, consumers and manufacturers use an arbitration process to resolve the dispute before resorting to costly and protracted litigation.

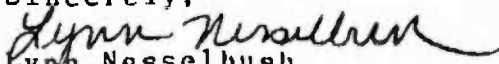
Unfortunately, there have been serious problems. Research done by CALPIRG in 1986 documents a consistent pattern of problems with the arbitration process -- ranging from lack of training of arbitrators to unfair reimbursements for consumer costs. For many consumers, the arbitration process has not provided a final resolution for their dispute and in fact has been an extra hurdle to be crossed.

AB 2057 addresses this issue by establishing strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It also allows consumers who go to court, and win, to recover damages if the manufacturer failed to maintain a certified arbitration program.

Enclosed you will find a factsheet which details the problems with the current law's arbitration processes and outlines how AB 2057 and the strengthening amendments will solve those problems.

I hope that we can count on your vote at the bill's hearing on Tuesday. If you have any questions or would like more information, please feel free to call me at 448-4516.

Sincerely,


Lynn Nesselbush
Legislative Advocate

FACT SHEET ON AB 2057 (LEMON LAW II)BACKGROUND

In 1982, legislation authored by Assemblywoman Sally Tanner amended the Song-Beverly Warranty Act to clarify what is meant by a "reasonable number of attempts" to repair a new motor vehicle. This amendment, known as the "Lemon Law," establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The Lemon Law amendment went into effect in January, 1983 and applies to new motor vehicles that are primarily for personal or family use. The Lemon Law does not apply to used cars.

The Lemon Law requires consumers and manufacturers to use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation in resolving their disputes.

Unfortunately, for many consumers, the arbitration process is just another hurdle to cross rather than a final resolution of the problem. AB 2057 is designed to make the arbitration process work by clarifying certain provisions of the law and addressing the following problems:

PROBLEM #1: Arbitration Panels Ignore Lemon Law Provisions & FTC Regs.

Arbitration programs often do not use the criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. The Lemon Law defines a "lemon" as a vehicle which has had four or more repair attempts on the same problem, or spends 30 days in the shop for any number of problems, during its first year or 12,000 miles. Some do not even train their arbitrators to use or understand the Lemon Law.

The arbitration panels do not comply with Federal Trade Commission (FTC) guidelines for third party dispute resolution programs. These guidelines set a 40 day limit for decisions and require that the boards operate in a fair and impartial manner.

The FTC guidelines, however, do not specify whether or not dealers may participate in the arbitration hearings. In the case of the Ford and Chrysler boards, dealers (and sometimes company representatives) often participate in discussions which lead to decisions. In addition, these same two boards generally do not allow consumers any oral presentation at the hearings.

AB 2057 (Tanner) requires that the arbitration programs be certified by the Bureau of Automotive Repair (BAR) as meeting the requirements of the Lemon Law and FTC arbitration guidelines. Further, the bill

allows for the recovery of a civil penalty of two times the amount of actual damages if the manufacturer fails to maintain a qualified arbitration program as defined in the previously mentioned standards.

The bill also requires that arbitrators be trained in the application of the Lemon Law's refund and replacement provisions.

In addition, the bill should be amended to clarify that dealer and/or manufacturer participation in any form is not acceptable unless the consumer is given a chance to participate equally.

PROBLEM #2: Arbitration Panels Rely on Manufacturer's Experts

Many arbitration panels rely on mechanics supplied by the manufacturer to evaluate the car in question. These manufacturers have an obvious conflict of interest.

AB 2057 requires that manufacturers provide an inspection by an independent automotive expert at the request of the arbitrator(s).

PROBLEM #3: Lack of Follow Up on Arbitration Decisions

The FTC regulations, referred to in the Lemon Law, provide general guidelines for following up on decisions which order another repair attempt. Unfortunately, the guidelines provide for a follow up to make sure that the repair attempt occurred, but not follow up to make sure the repair attempt corrected the problem. This is a serious gap in the requirements given the frequent occurrence of a another repair attempt as a decision.

AB 2057 does not address this problem.

The bill should be amended to include specific requirements for how arbitration boards should follow up on repair attempt decisions.

PROBLEM #4: Consumers' Costs Are Not Reimbursed

After ruling for the consumer, some arbitration boards insist that the consumer take a replacement car even though they have lost confidence in the manufacturer and would prefer a refund, or vice versa. Furthermore, consumers often are required to pay substantial costs such as sales taxes and license fees on the lemon car, or must pay rental car charges and towing fees incurred because of the defective automobile.

AB 2057 includes provisions that give the buyer the option of rejecting a replacement vehicle in favor of a refund, and specify that the manufacturer is responsible for sales taxes and license and fees as well as expenses incurred in connection with the repair of the vehicle and for towing and rental.

PROBLEM #5: 'Deduction For Use' Provision Abused

When the manufacturer reimburses the consumer the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to the discovery of the problem. Arbitration panels, however, often recommend an unreasonably high deduction by using commercial car rental rates and an unreasonably late date as the time at which the buyer's use is considered to be ended.

AB 2057 defines a specific formula to be used by the arbitrator to determine the amount of 'deduction for use'. The formula assumes the useful life of the car to be 120,000 miles and allows a percentage deduction based on the value of the car and the number of miles driven before the first time the car is taken in for repair.

PROBLEM #6: Consumers Not Protected From Used Lemons

There are no provisions in current law for what manufacturers may do with lemon vehicles which have been bought back from consumers. Without regulation, a manufacturer may resell the vehicle as a used car without informing consumers of the vehicle's repurchase history.

AB 2057 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.

Date of Hearing: May 5, 1987

AB 2057

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 2057 (Tanner) - As Amended: April 28, 1987

ASSEMBLY ACTIONS:

COMMITTEE	<u>G. E. & CON. PRO.</u>	VOTE	COMMITTEE	VOTE
-----------	------------------------------	------	-----------	------

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: new motor vehicles (lemon law).

DIGEST

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 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 judgement against a manufacturer who does not have a certified lemon law arbitration program. Specifically, it:

- continued -

AB 2057

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- 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 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.
- 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, however, would be free to take restitution in place of a replacement vehicle.
- 4) Specifies what is 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 must 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 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.
 - 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) 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 and requires compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.

- continued -

- 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 judgement and the manufacturer does not maintain a qualified third party dispute resolution process as established by this chapter.

FISCAL EFFECT

This bill will result in unknown costs to the BAR to certify arbitration programs, fully offset by fees charged to vehicle manufactures and distributors. According to the Board of Equalization, enactment of the bill would result in insignificant administrative costs to the board.

COMMENTS

The purpose of this bill, sponsored by 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.

Similar legislation, AB 3611 (Tanner, 1986 Session), generally makes many of the same changes except for the provision in AB 2057 for treble damages. AB 3611 died in the Senate.

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.

- continued -

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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.

Policy Questions

The committee may wish to consider the following:

- 1) Are treble damages necessary to ensure that arbitration programs used by manufacturers assist consumers in resolving the problems with their new car?
- 2) If BAR is going to have jurisdiction over the certification of arbitration programs dealing with new car warranty lemon law provisions, should they be given additional authority in the vehicle warranty area, where jurisdiction is presently unclear, since they will get more questions from consumers in that area?
- 3) Are the components of the qualified arbitration program fair to consumers and manufacturers alike? Should the components specify that if a dealer is present and allowed to speak, a consumer should be given equal time?

SUPPORT (verified 5/1/87)

CA Public Interest Research
Group (CalPIRG)

OPPOSITION

Automobile Importers of America
General Motors Corporation
Ford Motor Company

Ann Evans
324-2721
ageconpro

AB 2057
Page 4

5/7 - submitted amendment

AB 2057.

Q) Lemon Law -

* get FTC minimum reqmts.

Donna Selnick.

Song Beverly is a lemon law for Calif.

AG - Al Sheldon.

Cons. must show no cert. pgn; if manuf. can rebut that it is a lemon, then don't have to pay. Incentive same as some in Song Beverly (willfully, manuf. not complied)

amendment

up to 3 times offered by Delaine
author -- no, this is already part of Song Beverly.

opposition:

) Lee Ridgeway - GM. - contracts w/ BBs thruout 50 states; 4000 arbitrators
200 attys. Should they misapply, then would trigger treble
damages. - FTC Consent Order until 1990. Must have an arb pgn
in 50 states; plan has to be informal; if cons wants strict letter of law,
then consumer must go to court. GM went to court w/ state of NY:

power train. | no one is covered.
power train & other types of problems.

*? Can consumer have their lawyer at the arbitration.

(Shea) "they must consider + attempt to provide"

Janner accept pg 17 l 28. "willfully" **

Leg Council
req. #

- Sara Michaels.

- Richard Dugally Ford. - Cons. appeals running 34.7 days.

Ann across 7/2
MAY 12 1987

41546
RECORD #

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RN 87 015946 PAGE NO. 1

Substantive
AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN ASSEMBLY APRIL 28, 1987

Amendment 1

On page 16, line 2, strike out "or" and insert:

of

Amendment 2

On page 17, line 28, after "process" insert:

willfully

- 0 -

May 21, 1987

Assembly Ways and Means Committee
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

I am writing to urge your support for AB 2057 (Tanner) -- legislation to give California's new car Lemon Law a tune-up. AB 2057 recently received a "do pass" from the Assembly Committee on Governmental Efficiency and Consumer Protection (5-0) and was referred to the Assembly Ways and Means Committee.

The Lemon Law was passed in 1982 in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in a which a new car qualifies as a "lemon". The law requires that in the case of an alleged lemon vehicle, consumers must first use a "qualified" arbitration process to resolve the dispute before resorting to costly and protracted litigation.

Unfortunately, there have been serious problems. Research done by CALPIRG in 1986 documents a consistent pattern of problems with the arbitration process -- ranging from lack of training of arbitrators to unfair reimbursements for consumer costs.

AB 2057 addresses this issue by establishing strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It also allows consumers who win in court to recover damages if the manufacturer failed to maintain a certified arbitration program.

AB 2057 addresses the problems with the Lemon Law at little or no real cost to the state. The costs to the Bureau of Automotive Repair for certifying and de-certifying the arbitration programs will be fully covered by an annual fee charged to manufacturers.

Enclosed you will find a factsheet which details the problems with the current law's arbitration programs and explains how AB 2057 will solve those problems.

I hope that we can count on your support for this bill when it is heard in the Ways and Means Committee. If you have any questions or would like more information, please feel free to call me at 448-4516.

Sincerely,

Lynn Nesselbush
Legislative Advocate

FACT SHEET ON AB 2057 (Tanner) -- LEMON LAW II**BACKGROUND**

In 1982, legislation authored by Assemblywoman Sally Tanner was passed in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in which a new car qualifies as a "lemon". This law defines a "lemon" as a vehicle which has had four or more repair attempts made on the same problem or has spent 30 days in the shop during its first year or 12,000 miles.

The law requires that in the case of an alleged lemon vehicle, consumers must first use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation to resolve their dispute.

THE CURRENT SITUATION

The arbitration programs, either operated or sponsored by manufacturers, are not providing a fair and impartial process for consumers seeking relief from defective new cars. These programs do not comply with FTC minimum guidelines for third party dispute resolution processes nor do they abide by the provisions of the California Lemon Law.

There has been ample time in the last five years since the Lemon Law was enacted for manufacturers to operate arbitration programs which are fair. They have not done so. For many consumers, the arbitration process, rather than providing a final resolution to their problem, has instead become an extra hurdle to cross.

A report released by CALPIRG (August 1986) documented some of the problems faced by consumers using the arbitration process:

Problem #1: Arbitration Panels Ignore Lemon Law Provisions & FTC Regulations

Arbitration programs often do not use the criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. Some do not even train their arbitrators to use or understand the Lemon Law. Many consumers have received decisions calling for further inspections, diagnosis, repairs, extended warranties, or simply nothing at all -- despite the fact that they had already had their car repaired numerous times.

The arbitration process often takes far longer than the 40-60 days allowed in the FTC 703 regulations. The process becomes a continuation of an already interminable and frustrating experience which requires the consumer's aggressive persistence.

Problem #2: Arbitration Panels Rely on Manufacturer's Experts

Many arbitration panels rely on mechanics supplied by the

manufacturer to evaluate the car in question. These manufacturers have an obvious conflict of interest.

Problem #3: Lack of Follow Up on Arbitration Decisions

Despite the fact that arbitration boards often grant decisions calling for "one more repair attempt," they do not follow up to ensure that the repair attempt resolves the problem. For the consumer in these instances, the arbitration process, although having taken significant time and energy, moves them no closer to resolving their dispute.

Problem #4: Consumers' Costs Are Not Reimbursed

Consumers often are forced to incur expenses such as towing costs and rental car fees as a result of their inoperative vehicle and the subsequent repair process. These expenses as well as tax and license fees are often not reimbursed.

Problem #5: 'Deduction For Use' Provision Abused

When the manufacturer reimburses the consumer for the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to the discovery of the problem. Arbitration panels, however, often recommend an unreasonably high deduction by using commercial car rental rates and an unreasonably late date as the time at which the buyer's use is considered to be ended.

THE SOLUTION

AB 2057 addresses these problems by outlining strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It allows consumers who win in court to recover a civil penalty of up to two times the cost of actual damages if the manufacturer fails to maintain a certified arbitration program.

These penalty provisions provide the missing enforcement necessary to make the Lemon Law work. It can only be invoked if a consumer has a lemon and is forced to use legal action to resolve his or her dispute. This gives manufacturers a strong incentive to resolve legitimate disputes either through a certified arbitration program or through settlement; consequently, it is much more likely that consumers will be able to resolve their disputes without resorting to litigation.

In addition, the bill should be amended to: clarify that dealer and/or manufacturer participation in the decision-making process in any form is not acceptable unless the consumer is given a chance to participate equally; and, to include specific requirements for how arbitration boards should follow up on repair attempt decisions.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

ANN

May 22, 1987

Assemblywoman Sally Tanner

A.B. 2057 - Conflict

supplemental was

The above measure, ~~introduced~~ introduced by you, which is now set for hearing in the Assembly Governmental Efficiency and Consumer Protection Committee, appears to be in conflict with the following other measure(s):

A.B. 276-Eaves

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

MS 4783 C

AP - 276
987

Legislative Analyst
May 30, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Assembly May 13, 1987 and
As Proposed to be Further Amended by LCR No. 016489
1987-88 Session

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) for the Bureau of Automotive Repair to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.

Revenue:

1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program for the resolution of automobile warranty disputes. The program would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill would also change current law pertaining to vehicle warranty procedures and restitution.

Specifically, the bill:

- o Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the bureau to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (4) provide the Legislature

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with a biennial report evaluating the effectiveness of the program,

- o Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. Such fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund, and
- o Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

The BAR indicates it would incur program start-up costs up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$33,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8

AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN ASSEMBLY MAY 13, 1987

Amendment 1

On page 8, between lines 22 and 23 insert:

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

Amendment 2

On page 13, line 25, strike out "do" and insert:

be one that does

Amendment 3

On page 13, line 26, strike out "Comply" and
insert:

Complies

Amendment 4

On page 13, line 31, strike out "Bender" and
insert:

Benders

Amendment 5

On page 13, line 33, strike out "Prescribe" and
insert:

Prescribes

Amendment 6

On page 13, line 37, strike out "Provide" and
insert:

Provides

Amendment 7

On page 14, line 4, strike out "Require" and
insert:

Requires

Amendment 8

On page 14, line 10, strike out "Provide" and
insert:

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Provides

Amendment 9

On page 14, line 15, strike out "Bender" and
insert:

Benders

Amendment 10

On page 14, line 31, strike out "Obtain and
maintain" and insert:

Requires that no arbitrator deciding a dispute may be a party to the dispute, or an employee, agent, or 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 with the arbitrator unless the buyer is allowed to participate equally.

(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) Obtains and maintains

- 0 -

Legislative Analyst
August 11, 1987

ANALYSIS OF ASSEMBLY BILL NO. 276 (Eaves)
As Amended in Senate July 16, 1987 and
As Further Amended by LCR No. 021486
1987-88 Session

Fiscal Effect:

Cost: Aeronautics Account appropriation of up to \$1.5 million in 1988-89 and up to \$3 million annually thereafter for assistance to local airports.

- Revenue:
1. Transfers up to \$1.5 million in 1988-89 and up to \$3 million annually thereafter from the General Fund to the Aeronautics Account.
 2. Revenue reduction of up to \$25,000 in 1987-88, and up to \$50,000 annually thereafter, to the Aeronautics Account from a specified jet-fuel excise tax exemption.

Analysis:

This bill, an urgency measure, transfers specified sales tax revenues from the General Fund to the Aeronautics Account which would then be available on a continuously appropriated basis for specified aviation purposes.

Specifically, the bill provides that the portion of state sales tax revenue received from taxation of general aviation jet fuel be deposited in the Aeronautics Account. Currently, this revenue is deposited in the General Fund. Implementation of this provision is phased over two years so that 50 percent of such revenues are transferred in 1988-89 and all revenues are transferred annually thereafter.

The bill would continuously appropriate these specified jet fuel sales tax revenues to the Department of Transportation to provide local assistance to airports under the California Aid to Airports Program (CAAP), including (1) annual statutory allocations to eligible airports, and (2) annual discretionary grants

under the State Transportation Improvement Program. Subject to appropriation by the Legislature, these revenues also would be available to provide loans to airports for capital improvement purposes and for departmental support.

The bill increases from \$5,000 to \$10,000 the amount of the annual statutory allocation to each eligible public use airport under the CAAP.

The bill also exempts persons engaged in aerial application of certain agricultural products from payment of the 2-cent-per-gallon aircraft jet fuel excise tax under specified conditions. This provision is similar to provisions of current law which exempt such persons from the state's 9-cent-per-gallon excise tax on motor vehicle fuel (including aviation gasoline) under the motor vehicle fuel tax law.

Finally, the bill repeals the 5-cent-per-gallon partial refund of motor vehicle fuel excise taxes paid by general aviation users. Under current law, this refund may be claimed by general aviation users but, if claimed, such users must pay sales tax from which they would otherwise be exempt.

Fiscal Effect

The Board of Equalization estimates that the bill would transfer about \$2.2 million in jet fuel sales tax annually from the General Fund to the Aeronautics Account based on sales of about 43 million gallons and an average price of \$1.10 per gallon. Because prices reported by some airports were considerably above this level, we estimate that the amount of the transfer could be up to \$1.5 million in 1988-89 and \$3 million annually thereafter. The bill would appropriate these revenues as follows:

- o For 1988-89, (1) \$950,000 to fund the increase in annual grants from \$5,000 to \$10,000, and (2) up to \$550,000 for local assistance to airports under the State Transportation Improvement Program (STIP).
- o For 1989-90 and thereafter, (1) \$950,000 in annual grants, and (2) up to \$2,050,000 in STIP grants.

Exemption of persons engaged in aerial application of agricultural products from payment of jet fuel excise taxes would reduce revenues deposited in the Aeronautics Account by up to \$25,000 in 1987-88 and up

AB
276--contd

-3-

Most users of aviation gasoline do not currently claim the 5-cent-per-gallon refund authorized under the motor vehicle fuel tax law because they would then be subject to a generally higher amount of tax under state and local sales taxes. We estimate, therefore, that the net fiscal impact of this provision would be insignificant.

85/s8

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

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.

(More)

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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.

(More)



-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

(More)



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.

(More)



- 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

(More)

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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

(More)



- (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.

add'l authors amendments. (14)

discussion w/
AG 8/25/87
Sue

may recover up to 2x + actual costs and is up
at the discretion

major
add "substantial" (compliance) (addresses industry
concern that they not be liable for
anything but patterns)

p. 14 softens take into consideration ~~rate~~ --
taking into account rather than rendering
decision based upon.
(I) also deleted.

Aug 17 amendments.

#1 if manuf has a pgm which is qualified +
~~was doesn't like decision~~. Manuf can
then not liable for treble damages.
Incentive to qualify.
Big change

#2 ~~no any amount of time~~
cons. must notice manuf.

#3 another chance not to file a lawsuit

#4 if the buyer establishes a willful violation
excludes other remedies.

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AB2057ca as amended 8/25/87

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.

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LEGISLATIVE INTENT SERVICE



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AB 2057

AP 1003

As amended by the Assembly, this bill, effective July 1, 1988:

- 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; 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) 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 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.
- 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, clarifies that dealer and/or manufacturer participation in

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the decision-making 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) 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 if the manufacturer has a qualified third party dispute resolution program which "substantially complies" with the specified criteria. This is to provide the manufacturer with incentive to qualify their program and removes the ability of the consumer to sue the manufacturer over a program detail which is not in compliance although the program itself is in substantial compliance.
- 3) Exempt the manufacturer from liability for treble damages if the consumer does not provide the manufacturer with written notice requesting the manufacturer to comply with the provisions of this bill ~~gives the~~ *and* manufacturer 30 days to comply with the written notice before the manufacturer could be held liable for treble damages.
- 4) Prevent the consumer from collecting treble damages simultaneously for violations of different provisions of the law.

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- 5) Provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair (BAR) if they are in "substantial compliance" with the specified criteria.
- 6) Specify that BAR shall be the entity to conduct the survey to measure customer satisfaction and to identify violations of the lemon law.
- 7) Reduce the information which applicants for a license ~~from the NMVB~~ must provide to the NMVB to only the number of motor vehicles sold, leased, or otherwise distributed in California during the proceeding year. ~~delete the phrase provision which required applicants to provide any other information that the NMVB may require.~~
- 8) Require the arbitration panel to take into account all legal and equitable factors in rendering their decision.
- 9) 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 clarifies that if anyone (e.g. ~~technicians or others who would act as an industry expert~~) participates substantively in the merits of any dispute with the arbitrator, the buyer is allowed to participate also.
- 10) Delete the requirement that if the arbitration panel decides that another repair attempt must be made, another panel 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. ~~Narrow the circumstances under which...~~
- 11) Specify that only under the circumstance where a manufacturer has taken a car back which is determined under the definition in the lemon 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.
- 12) ~~Double join AB 2057 with AB 1367 (Tanner) which specified that remedies to buyers with damaged goods include the right of replacement or reimbursement.~~ *Add the provisions of AB 2057 so the bills do not have to be double joined. AB 1367*
- 13) Double join AB 2057 with AB 276 (Eaves) which relates to rates and refunds of aircraft jet fuel but effects the same section of the Revenue and Tax Code ~~AB 2057~~.
- 14) Appropriate *a loan of* \$25,334 to the DMV to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers *to be repaid from the Certification Account of the Automotive Repair Fund.*

FISCAL EFFECT

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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) 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.
- 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.
- 2 1/2) 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) ~~All parties~~ The Senate amendments are the result of negotiations with all ^{the} affected parties. The major impact is the removal of mandatory treble damages under certain circumstances and the ~~fact~~ principle that an ~~for~~ auto arbitration ~~is not~~ cannot be decertified ~~to~~ ~~or~~ cannot be ~~over~~ ~~ruled~~ ~~righted~~ ~~in~~ ~~law~~ ~~suit~~ the subject of a lawsuit ~~to~~ because of a ~~detail~~ program detail if the program ~~is~~ itself is in substantial compliance.

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 if the manufacturer has a qualified third party dispute resolution program which "substantially complies" with the specified criteria.
- 3) Exempt the manufacturer from liability for treble damages if the consumer does not provide the manufacturer with written notice requesting the manufacturer to comply with the provisions of this bill and gives the manufacturer 30 days to comply with the written notice before the manufacturer could be held liable for treble damages.
- 4) Prevent the consumer from collecting treble damages simultaneously for violations of different provisions of the law.
- 5) Provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair (BAR) if they are in "substantial compliance" with the specified criteria.
- 6) Specify that BAR shall be the entity to conduct the survey to measure customer satisfaction and to identify violations of the lemon law.
- 7) 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."
- 8) Require the arbitration panel to take into account all legal and equitable factors in rendering their decision.
- 9) 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.
- 10) Delete the requirement that if the arbitration panel decides that another 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.
- 11) Specify that only under the circumstance where a manufacturer has taken a car back which is determined under the definition in the lemon 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.

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AB 2057

- 12) Add the provisions of AB 1367 (Tanner) which specify that remedies to buyers with damaged goods include the right of replacement or reimbursement.
- 13) Double join AB 2057 with AB 276 (Eaves) which relates to rates and refunds of aircraft jet fuel but effects the same section of the Revenue and Tax Code as AB 2057.
- 14) Appropriate a loan of \$25,334 to the DMV from the New Motor Vehicle Board Account to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers.

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.
- 4) DMV would incur program start-up costs of \$25,000 in 1987-88, decreasing to \$7,000 annually thereafter. The bill contains an appropriation therefor.

Implement an auto arbitration certification program.

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AB 2057

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.
- 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 mandatory treble damages under certain circumstances and the addition of the concept of substantial compliance of an auto arbitration program to mitigate against actions taken against a program based on details.



Legislative Analyst
August 28, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Senate August 25, 1987
1987-88 Session

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) to implement a dispute resolution certification program; beginning in 1988-89, costs would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program to certify third party dispute resolution processes for automobile warranty disputes. The certification program would become operative July 1, 1988 and would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill also would change current law pertaining to vehicle warranty procedures and restitution.

Specifically, the bill:

- o Authorizes BAR to revoke or suspend any arbitration program if it does not meet specified standards and requires the bureau to (1) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (2) provide the Legislature with a biennial report evaluating the effectiveness of the program.



- o Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. These fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund.
- o Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

We estimate that the BAR would incur program start-up costs of up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$25,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8

Ernie Peters 9/4 -
 Will stick to it in writing
 pgm would begin Jan 1
 but \$ July 1. So
 operative date of pgm
 amendment July 1.
 "Might be beginning work early."
 would be like saying bill
 starts in Jan but really will
 start in Oct or so.
 Tanner contends
 there are no costs
 before July.
 1367 - Senate fl un or linc
 file. Will take it
 off. Referred to
 Senate Appropriations
 \$4 mil surplus

Janner. (

- when buy back a lemon pay back sales tax + unused license fee.

Greene - (dealer ~~point~~)

- when it gets back to

- deduct from next sales tax installment deduct amt from board of equalization.
- same for registration fee (sent to DMV)
DMV opposed to bill.

Janner

- manuf resp. for entire thing (not dealer)

④ - after 1 repair attempt. Cases where manuf says we'll take it back. Not a lemon under lemon law.

- when a car determined to be a lemon pursuant to law + manuf bought back cannot sell unless disclose.

transferred to a manuf as a result of a "non conform conformity" - well there could be a number of nonconformity.

9/3/87 - Jay de Faria on the amendments.

- ① not to require them to apply lemon law in every case which comes before them like a court of law. Leg'd to take it into consideration & not req'd to apply reach a decision strictly in accordance w/ (training how required)
- ② Ford & Chrysler have a dealer or manuf rep. Ford has a dealer member who decides on lemon cases (1 on 3). but not if they are party to a dispute -- If you want general information from people in the room, they make answer questions but not as to the merits of the particular case unless the consumer is allowed to speak on the case. Dealer can decide the dispute if not a party. Used to say cannot participate.
- ③ Try to avoid situation where a repair attempt doesn't solve the problem. Would just start a new case. Avoid transgressing FTC regmt of 40 days. Can go to court.
- ④ Application of all the principles. Overall is fair. does not require absolutely strict adherence. Adds all legal & equitable circumstances. Consistent w/ law. Cuts both ways. If good gripe but no law-work in field in fairness.

Concurrence in Senate Amend.

ASSEMBLY THIRD READING

AB 2057 (Tanner) - As Amended: ~~June 11~~ ^{Aug 17}, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE 6-1 COMMITTEE W. & M. VOTE 18-5Ayes: Chacon, Eastin, Hannigan, Sher,
Stirling, AreiasAyes: 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,
McClintockDIGEST

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 -

As Passed by the Assembly, the bill:

~~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) 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; 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 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.

- continued -

- 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, 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) 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:

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.

→ 1) Replace the section on treble damages + reasonable attorney's fees and costs with a new section which provides - continued -
for treble

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

Sept. 4
dated Sept. 4

SUMMARY OF AMENDMENTS - AB 2057 (TANNER)

- 1) Amendments 1-9. AB 2057 was amended in the Senate Judiciary Committee to provide that auto arbitration programs are certifiable by the Bureau of Automotive Repair if they are in "substantial compliance" with a set of specified criteria. Amendments 1-9 are conforming amendments that were not made in the Judiciary Committee.

- 2) Amendments 10 and 12 ("SEC. 9." addition). These amendments add the provisions of AB 1367 (Tanner) to AB 2057 so the bills will not have to be double-joined. AB 1367 has no opposition and was passed out of Senate Appropriations under Rule 28.8.

- 3) Amendments 11 and 12 ("SEC. 10." addition). These amendments double-join the bill with AB 276 (Eaves).

- 4) Amendment 12 ("SEC. 8." addition). This amendment appropriates \$25,334 to the Department of Motor Vehicles to handle the computerizing of the billing system for collecting motor vehicle fees from auto manufacturers. AB 2057 imposes a fee of up to \$1 on each new motor vehicle sold in the state. The fee revenues will fund the certification program created by the bill.
The appropriation is from the unappropriated surplus of the so-called "New Motor Vehicle Board Account" in the Motor Vehicle Account. The New Motor Vehicle Board is not opposed to the appropriation since it will be repaid in the next fiscal year from fee revenues that will be collected starting July 1, 1988.

AUG 28 1987

**Substantive
AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN SENATE AUGUST 25, 1987**

Amendment 1

On page 3, line 37, after "in" insert:

substantial

Amendment 2

On page 4, line 12, after "in" insert:

substantial

Amendment 3

On page 4, line 20, after "in" insert:

substantial

Amendment 4

On page 4, line 36, after "in" insert:

substantial

Amendment 5

On page 4, line 39, after "in" insert:

substantial

Amendment 6

On page 5, line 1, after "in" insert:

substantial

Amendment 7

On page 5, line 18, after "in" insert:

substantial

Amendment 8

On page 5, line 35, after "in" insert:

substantial

Amendment 9

On page 6, line 2, after the second "in" insert:

substantial

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Amendment 10

On page 17, line 12, strike out "be as follows" and insert:

include the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and the following

Amendment 11

On page 19, line 28, after "SEC. 6." insert:

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 $\frac{43}{4}$ 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 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.

~~(c)~~

(d) The estimate required by subdivisions ~~(c)~~ subdivisions (a) and (b) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivisions ~~(c)~~ 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.

Amendment 12

On page 21, below line 1, insert:

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.

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/13/87

Bill No.: AB 2057

Policy Committee: Governmental Efficiency &
Consumer Protection

Vote: 6 - 1

Urgency: No

Hearing Date: 06/03/87

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Allan Lind

Summary

This bill clarifies California's "lemon law" in various respects; specifies means for dispute resolution and provides for treble damages and attorney's fees to consumers who obtain judgments in their favor against a manufacturer who does not have a certified lemon law arbitration program. The bill requires the Bureau of Automotive Repair (BAR) to enforce provisions of the bill and authorizes BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) for the costs of the bill.

Fiscal

Undetermined costs to BAR to certify arbitration programs.

Undetermined costs to the NMVB to collect fees.

BAR costs offset by fees; NMVB costs are probably absorbable.

Undetermined General Fund costs to reimburse manufacturers for state sales taxes collected by the manufacturer on lemon cars when the manufacturer has to buy back the lemon car, including sales tax, from the customer.

AL:srh



WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/13/87

Bill No.: AB 2057

Policy Committee: Governmental Efficiency &
Consumer Protection

Vote: 6 - 1

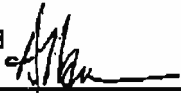
Urgency: No

Hearing Date: 06/03/87

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Allan Lind 

Summary

This bill clarifies California's "lemon law" in various respects; specifies means for dispute resolution and provides for treble damages and attorney's fees to consumers who obtain judgements in their favor against a manufacturer who does not have a certified lemon law arbitration program. The bill requires the Bureau of Automotive Repair (BAR) to enforce provisions of the bill and authorizes BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) for the costs of the bill.

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Undetermined costs to BAR to certify arbitration programs.

Undetermined costs to the NMVB to collect fees.

BAR costs offset by fees; NMVB costs are probably absorbable.

Undetermined General Fund costs to reimburse manufacturers for state sales taxes collected by the manufacturer on lemon cars when the manufacturer has to buy back the lemon car, including sales tax, from the customer.

AL:srh



Legislative Analyst
May 30, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Assembly May 13, 1987 and
As Proposed to be Further Amended by LCR No. 016489
1987-88 Session

AB 2057 (Am. 5/13/87 & LCR No. 016489)

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) for the Bureau of Automotive Repair to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program for the resolution of automobile warranty disputes. The program would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill would also change current law pertaining to vehicle warranty procedures and restitution.



Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the bureau to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (4) provide the Legislature with a biennial report evaluating the effectiveness of the program,
- Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. Such fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund, and
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

The BAR indicates it would incur program start-up costs up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning



in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$33,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8



Date of Hearing: May 5, 1987.

AB 2057

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 2057 (Tanner) - As Amended: April 28, 1987

ASSEMBLY ACTIONS:

COMMITTEE	<u>G. E. & CON. PRO.</u>	<u>VOTE</u>	COMMITTEE	<u>VOTE</u>
-----------	------------------------------	-------------	-----------	-------------

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: new motor vehicles (lemon law).

DIGEST

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 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 judgement against a manufacturer who does not have a certified lemon law arbitration program. Specifically, it:

- continued -

AB 2057

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- 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 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.
- 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, however, would be free to take restitution in place of a replacement vehicle.
- 4) Specifies what is 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 must 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 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.
 - 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) 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 and requires compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.

- continued -



- 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 judgement and the manufacturer does not maintain a qualified third party dispute resolution process as established by this chapter.

FISCAL EFFECT

This bill will result in unknown costs to the BAR to certify arbitration programs, fully offset by fees charged to vehicle manufactures and distributors. According to the Board of Equalization, enactment of the bill would result in insignificant administrative costs to the board.

COMMENTS

The purpose of this bill, sponsored by 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.

Similar legislation, AB 3611 (Tanner, 1986 Session), generally makes many of the same changes except for the provision in AB 2057 for treble damages. AB 3611 died in the Senate.

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.

- continued -



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.

Policy Questions

The committee may wish to consider the following:

- 1) Are treble damages necessary to ensure that arbitration programs used by manufacturers assist consumers in resolving the problems with their new car?
- 2) If BAR is going to have jurisdiction over the certification of arbitration programs dealing with new car warranty lemon law provisions, should they be given additional authority in the vehicle warranty area, where jurisdiction is presently unclear, since they will get more questions from consumers in that area?
- 3) Are the components of the qualified arbitration program fair to consumers and manufacturers alike? Should the components specify that if a dealer is present and allowed to speak, a consumer should be given equal time?

SUPPORT (verified 5/1/87)

CA Public Interest Research
Group (CalPIRG)

OPPOSITION

Automobile Importers of America
General Motors Corporation
Ford Motor Company



Recommendation:

Do pass ~~to suspend~~, then ~~do pass~~.

The General Fund expenditure comes in the form of a reimbursement claim paid by the BOE to auto manufacturers. This would occur when the auto company is required to make restitution to the customer for a lemon car. If the restitution order is to pay the customer some pro rata cost for the car, plus sales tax, then the bill would require BOE to reimburse the auto company the amount of sales tax the auto company repaid to the customer.



AL:srh

Author will offer amendments.



WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/13/87

Bill No.: AB 2057

Policy Committee: Governmental Efficiency &
Consumer Protection

Vote: 6 - 1

Urgency: No

Hearing Date: 06/03/87

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Allan Lind 

Summary

This bill clarifies California's "lemon law" in various respects; specifies means for dispute resolution and provides for treble damages and attorney's fees to consumers who obtain judgments in their favor against a manufacturer who does not have a certified lemon law arbitration program. The bill requires the Bureau of Automotive Repair (BAR) to enforce provisions of the bill and authorizes BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) for the costs of the bill.

Fiscal

Undetermined costs to BAR to certify arbitration programs.

Undetermined costs to the NMVB to collect fees.

BAR costs offset by fees; NMVB costs are probably absorbable.

Undetermined General Fund costs to reimburse manufacturers for state sales taxes collected by the manufacturer on lemon cars when the manufacturer has to buy back the lemon car, including sales tax, from the customer.

AL:srh

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DPA

ASSEMBLY WAYS AND MEANS COMMITTEE
REPUBLICAN ANALYSIS

AB 2057 (Tanner) -- LEMON LAW - PART II
Version: 5/13/87 and RN #16489
Vice Chairman: Bill Baker
Recommendation: Oppose.
Subject to Gann Limit: No
Vote: 2/3 (Appropriation)

Amendment
Sec. 1 effective
7/1/88
Support

Summary: Requires Bureau of Auto Repair to "certify" all arbitration panels created by the original "Lemon Law." Also 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. Fiscal effect: Up to \$158,000 in 1987-88 increasing to \$293,000 annually thereafter to the new Certification Account in the Automotive Repair Fund to resolve automobile warranty disputes. Up to \$300,000 in increased fee revenues annually to the Certification Account beginning in 1988-89. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

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 system is not working, so her answer is to make it better by turning over more of its functions to the government.

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.

The author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel. So she wants to charge all purchasers of new cars to "certify" that the Boards meets certain standards. Currently, most manufacturers contract with the Better Business Bureau.

As a hammer to force the manufacturers to submit to this certification process, this bill will expose those companies that refuse to certify to triple damages, including attorneys fees. Any company that doesn't certify will become an immediate target for thousands of out-of-work attorneys.

This mandatory certification will turn these informal proceedings into formal court hearings. Those who are unhappy with the results will soon start challenging the validity of their arbitration board, and appeals will be bogged down in procedural minutiae.



In the end it will end up like our court system and our regulatory agencies -- no flexibility, endless litigation, lots of government employees and huge backlogs.

Ironically, this proposition comes at a time when the Contractors' License Board, the Courts and many other agencies are looking to voluntary arbitration as a way to solve their backlogs.

If Mrs. Tanner insists on this process, wouldn't it be better to make the certification process voluntary and let the car companies use it in their advertisements for competitive advantage? Last year, Mrs. Tanner agreed to a voluntary process and Chrysler immediately said they would seek certification. (The bill died in the Senate.)

Policy Committee Vote

GE & CON PRO. -- 5/5/87

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

Consultants: John Caldwell/Shannon Hood



Honorable Sally Tanner
Member of the Assembly
State Capitol, Room 4146
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 2057
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
	AB 3611 (1986)	RN 87 016489

6-3

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured 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.

SUMMARY OF CHANGES

This version of the bill makes the following minor changes from the previous analysis of May 13, 1987.

Strengthens the rules for arbitration and makes minor grammatical changes which do not change our position.

SUMMARY OF COMMENTS

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

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		1986-87		1987-88		1988-89		
		FC		FC		FC		
0860/Bd. of Equal	SO	--	S	\$0.5	S	\$1		001/Gen.
1149/Retail Sales and Use Taxes		--	U	-\$73	U	-\$145		001/Gen.
1150/BAR	SO	--	C	158	C	293		499/Cont. Acct.
1200/Misc. Reg. Fees	RV	--	U	150	U	300		499/Cont. Acct.
2740/Motor Vehicles	SO	--	C	33	C	7		054/NMVB

Impact on State Appropriations Limit--Yes

POSITION:

Department Director

Date

Neutral

Principal Analyst (223) R. Baker	Date	Acting Prog. Budget Mgr.	Date	Governor's Office
<i>R. Baker</i>		Wallis L. Clark		Position noted
		<i>Wallis L. Clark</i>	<i>5/1/87</i>	Position approved
				Position disapproved
				by: _____ date: _____

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

LEGISLATIVE INTENT SERVICE (800) 666-1917



AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	RN 87 016489	AB 2057

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.

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 the 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, 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



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	RN 87 016489	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.



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

RN 87 016489

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

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

LEGISLATIVE INTENT SERVICE (800) 666-1917



5/13/87 and RN #16489

WEM

ASSEMBLY COMMITTEE ON ~~GOVERNMENT EFFICIENCY & CONSUMER PROTECTION~~
REPUBLICAN ANALYSIS

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

Version: 4/28/87

Vice Chairman: ~~Larry Stirling~~ BB

Recommendation: Oppose ~~or Abstain~~

Vote: 2/3 (Appropriation)

Gann: no

Summary: Requires Bureau of Auto Repair to "certify" all arbitration panels created by the original "Lemon Law." Also 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. Fiscal effect: ~~Tax of up to \$1 per new car sold in state.~~ *Insert*

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 system is not working, so her answer is to make it better by turning over more of its functions to the government. ~~that paradox 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.

The author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel. So she wants to charge all purchasers of new cars to "certify" that the Boards meets certain standards. *Currently, most manufacturers contract with the Better Business Bureau.*

As a hammer to force the manufacturers to submit to this certification process, ~~she has introduced an amendment which~~ will expose those companies that refuse to certify to triple damages. Any company that doesn't certify will become an immediate target for thousands of out-of-work attorneys.

This mandatory certification will turn these informal proceedings into formal court hearings. Those who are unhappy with the results will soon start challenging the validity of their arbitration board, and appeals will be bogged down in procedural minutiae.

In the end it will end up like our court system and our regulatory agencies -- no flexibility, endless litigation, lots of government employees and huge backlogs.

Ironically, this proposition comes at a time when the Contractors' License Board, the Courts and many other agencies are looking to voluntary arbitration as a way to solve their backlogs.

If Mrs. Tanner insists on this process, wouldn't it be better to make the certification process voluntary and let the car companies use it in their advertisements for competitive advantage? Last year, Mrs. Tanner agreed voluntary process and Chrysler immediately said they would seek certification. (The bill died in the Senate.)

GE & CON. PRO.
5/5/87 DP (6-1)
Ayes: Stirling
Nays: Harvey
NV: Strangle
Abs: Gresham
Consultants: John Callahan, Tanner School
including attorneys fees

LEGISLATIVE INTENT SERVICE (800) 666-1917

this bill

Legislative Analyst
May 30, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Assembly May 13, 1987 and
As Proposed to be Further Amended by LCR No. 016489
1987-88 Session

AB 2057 (Am. 5/13/87 & LCR No. 016489)

Fiscal Effect:

Cost:

Insert
Up to \$158,000 in ~~last half of~~ 1987-88
increasing to \$293,000 annually
thereafter to the Certification *(new)*
Account in the Automotive Repair Fund
~~(created by this bill) for the Bureau~~
of Automotive Repair to resolve
automobile warranty disputes. ~~costs~~
~~after 1988-89 would be fully offset by~~
~~fees.~~

Revenue:

1. Up to \$300,000 in *increased* fee revenues
annually to the Certification
Account beginning in 1988-89.
2. Unknown revenue loss to the
General Fund annually from sales
tax reimbursements to vehicle
manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program for the resolution of automobile warranty disputes. The program would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill would also change current law pertaining to vehicle warranty procedures and restitution.

Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the bureau to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (4) provide the Legislature with a biennial report evaluating the effectiveness of the program,
- Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. Such fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund, and
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

The BAR indicates it would incur program start-up costs up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning

in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$33,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8

Honorable Sally Tanner
Member of the Assembly
State Capitol, Room 4146
Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Tanner	BILL NUMBER AB 2057
SPONSORED BY	RELATED BILLS AB 3611 (1986)	AMENDMENT DATE May 13, 1987

5H

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured 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.

SUMMARY OF COMMENTS

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

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1986-87	FC	1987-88	FC	1988-89	
0860/Bd. of Equal 1149/Retail Sales and Use Taxes	SO	--	5	\$0.5	5	\$1	001/Gen.	
1150/BAR	SO	--	U	-\$73	U	-\$145	001/Gen. Acct.	
1200/Misc. Reg. Fees	RV	--	U	150	U	300	499/Cont. Acct.	
2740/Motor Vehicles	SO	--	C	33	C	7	054/NMVB	

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)

POSITION: Neutral	Department Director	Date
Principal Analyst (223) R. Baker	Date Acting Prog. Budget Mgr. Date	Governor's Office
<i>R. Baker</i>	<i>Wallis L. Clark</i>	Position noted
<i>5/24/87</i>	<i>5/27/87</i>	Position approved
		Position disapproved
		by: date:

CJ:BN1/0064A/1045C
BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 13, 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 the 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, 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



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

May 13, 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	<u>\$145,200</u>

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



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 13, 1987	AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

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

LEGISLATIVE INTENT SERVICE (800) 666-1917



MAY 19 1987

87139 12:34

RN 87 016489 PAGE NO. 1

SH

F:

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2057
ADOPTED IN ASSEMBLY MAY 13, 1987

TO BE ADOPTED
IN COMMITTEE

Amendment 1

On page 13, line 25, strike out "do" and insert:

s

Amendment 2

On page 13, line 26, strike out "Comply" and

insert:

Complies

Amendment 3

On page 13, line 31, strike out "Render" and

insert:

Renders

Amendment 4

On page 13, line 33, strike out "Prescribe" and

insert:

Prescribes

Amendment 5

On page 13, line 37, strike out "Provide" and

insert:

Provides

Amendment 6

On page 14, line 4, strike out "Require" and

insert:

Requires

Amendment 7

On page 14, line 10, strike out "Provide" and

insert:

Provides

Amendment 8

On page 14, line 15, strike out "Render" and

insert:

LEGISLATIVE INTENT SERVICE (800) 666-1917



SH

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN ASSEMBLY MAY 13, 1987

Amendment 1

On page 13, line 25, strike out "do" and insert:

be one that does

Amendment 2

On page 13, line 26, strike out "Comply" and
insert:

Complies

Amendment 3

On page 13, line 31, strike out "Render" and
insert:

Renderers

Amendment 4

On page 13, line 33, strike out "Prescribe" and
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Prescribes

Amendment 5

On page 13, line 37, strike out "Provide" and
insert:

Provides

Amendment 6

On page 14, line 4, strike out "Require" and
insert:

Requires

Amendment 7

On page 14, line 10, strike out "Provide" and
insert:

Provides

Amendment 8

On page 14, line 15, strike out "Render" and
insert:



Readers

Amendment 9

On page 14, line 31, strike out "Obtain and maintain" and insert:

Requires that no arbitrator deciding a dispute may be a party to the dispute, or an employee, agent, or 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 unless the buyer is allowed to participate equally.

(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) Obtains and maintains

- 0 -



Date of Hearing: May 5, 1987.

DPA 6-1
Razee (NV)
Grisham (also)
Harvey (NO)
Stirling (aye)
AB 2057

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 2057 (Tanner) - As Amended: April 28, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

SUBJECT

Warranties: new motor vehicles (lemon law).

DIGEST

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 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 judgement against a manufacturer who does not have a certified lemon law arbitration program. Specifically, it:

- continued -

AB 2057



- 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 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.
- 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, however, would be free to take restitution in place of a replacement vehicle.
- 4) Specifies what is 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 must 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 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.
 - 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) 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 and requires compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.

- continued -



- 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 judgement and the manufacturer does not maintain a qualified third party dispute resolution process as established by this chapter.

FISCAL EFFECT

This bill will result in unknown costs to the BAR to certify arbitration programs, fully offset by fees charged to vehicle manufactures and distributors. According to the Board of Equalization, enactment of the bill would result in insignificant administrative costs to the board.

COMMENTS

The purpose of this bill, sponsored by 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.

Similar legislation, AB 3611 (Tanner, 1986 Session), generally makes many of the same changes except for the provision in AB 2057 for treble damages. AB 3611 died in the Senate.

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.

- continued -



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.

Policy Questions

The committee may wish to consider the following:

- 1) Are treble damages necessary to ensure that arbitration programs used by manufacturers assist consumers in resolving the problems with their new car?
- 2) If BAR is going to have jurisdiction over the certification of arbitration programs dealing with new car warranty lemon law provisions, should they be given additional authority in the vehicle warranty area, where jurisdiction is presently unclear, since they will get more questions from consumers in that area?
- 3) Are the components of the qualified arbitration program fair to consumers and manufacturers alike? Should the components specify that if a dealer is present and allowed to speak, a consumer should be given equal time?

SUPPORT (verified 5/1/87)

CA Public Interest Research
Group (CalPIRG)

OPPOSITION

Automobile Importers of America
General Motors Corporation
Ford Motor Company

Ann Evans
324-2721
ageconpro

AB 2057
Page 4



May 21, 1987

Assembly Ways and Means Committee
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

I am writing to urge your support for AB 2057 (Tanner) -- legislation to give California's new car Lemon Law a tune-up. AB 2057 recently received a "do pass" from the Assembly Committee on Governmental Efficiency and Consumer Protection (5-0) and was referred to the Assembly Ways and Means Committee.

The Lemon Law was passed in 1982 in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in which a new car qualifies as a "lemon". The law requires that in the case of an alleged lemon vehicle, consumers must first use a "qualified" arbitration process to resolve the dispute before resorting to costly and protracted litigation.

Unfortunately, there have been serious problems. Research done by CALPIRG in 1986 documents a consistent pattern of problems with the arbitration process -- ranging from lack of training of arbitrators to unfair reimbursements for consumer costs.

AB 2057 addresses this issue by establishing strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It also allows consumers who win in court to recover damages if the manufacturer failed to maintain a certified arbitration program.

AB 2057 addresses the problems with the Lemon Law at little or no real cost to the state. The costs to the Bureau of Automotive Repair for certifying and de-certifying the arbitration programs will be fully covered by an annual fee charged to manufacturers.

Enclosed you will find a factsheet which details the problems with the current law's arbitration programs and explains how AB 2057 will solve those problems.

I hope that we can count on your support for this bill when it is heard in the Ways and Means Committee. If you have any questions or would like more information, please feel free to call me at 448-4516.

Sincerely,


Lynn Nesselbush
Legislative Advocate



FACT SHEET ON AB 2057 (Tanner) -- LEMON LAW II**BACKGROUND**

In 1982, legislation authored by Assemblywoman Sally Tanner was passed in order to provide remedies for consumers who purchase defective new cars. It amended existing warranty law to specifically define the situation in which a new car qualifies as a "lemon". This law defines a "lemon" as a vehicle which has had four or more repair attempts made on the same problem or has spent 30 days in the shop during its first year or 12,000 miles.

The law requires that in the case of an alleged lemon vehicle, consumers must first use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation to resolve their dispute.

THE CURRENT SITUATION

The arbitration programs, either operated or sponsored by manufacturers, are not providing a fair and impartial process for consumers seeking relief from defective new cars. These programs do not comply with FTC minimum guidelines for third party dispute resolution processes nor do they abide by the provisions of the California Lemon Law.

There has been ample time in the last five years since the Lemon Law was enacted for manufacturers to operate arbitration programs which are fair. They have not done so. For many consumers, the arbitration process, rather than providing a final resolution to their problem, has instead become an extra hurdle to cross.

A report released by CALPIRG (August 1986) documented some of the problems faced by consumers using the arbitration process:

Problem #1: Arbitration Panels Ignore Lemon Law Provisions & FTC Regulations

Arbitration programs often do not use the criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. Some do not even train their arbitrators to use or understand the Lemon Law. Many consumers have received decisions calling for further inspections, diagnosis, repairs, extended warranties, or simply nothing at all -- despite the fact that they had already had their car repaired numerous times.

The arbitration process often takes far longer than the 40-60 days allowed in the FTC 703 regulations. The process becomes a continuation of an already interminable and frustrating experience which requires the consumer's aggressive persistence.

Problem #2: Arbitration Panels Rely on Manufacturer's Experts

Many arbitration panels rely on mechanics supplied by the



manufacturer to evaluate the car in question. These manufacturers have an obvious conflict of interest.

Problem #3: Lack of Follow Up on Arbitration Decisions

Despite the fact that arbitration boards often grant decisions calling for "one more repair attempt," they do not follow up to ensure that the repair attempt resolves the problem. For the consumer in these instances, the arbitration process, although having taken significant time and energy, moves them no closer to resolving their dispute.

Problem #4: Consumers' Costs Are Not Reimbursed

Consumers often are forced to incur expenses such as towing costs and rental car fees as a result of their inoperative vehicle and the subsequent repair process. These expenses as well as tax and license fees are often not reimbursed.

Problem #5: 'Deduction For Use' Provision Abused

When the manufacturer reimburses the consumer for the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to the discovery of the problem. Arbitration panels, however, often recommend an unreasonably high deduction by using commercial car rental rates and an unreasonably late date as the time at which the buyer's use is considered to be ended.

THE SOLUTION

AB 2057 addresses these problems by outlining strong standards for the arbitration process to ensure that consumers get a fair and impartial hearing. It requires that the Bureau of Automotive Repair (BAR) certify and de-certify arbitration programs based on their compliance with the standards outlined in the law. It allows consumers who win in court to recover a civil penalty of up to two times the cost of actual damages if the manufacturer fails to maintain a certified arbitration program.

These penalty provisions provide the missing enforcement necessary to make the Lemon Law work. It can only be invoked if a consumer has a lemon and is forced to use legal action to resolve his or her dispute. This gives manufacturers a strong incentive to resolve legitimate disputes either through a certified arbitration program or through settlement; consequently, it is much more likely that consumers will be able to resolve their disputes without resorting to litigation.

In addition, the bill should be amended to: clarify that dealer and/or manufacturer participation in the decision-making process in any form is not acceptable unless the consumer is given a chance to participate equally; and, to include specific requirements for how arbitration boards should follow up on repair attempt decisions.



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.

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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.

- continued -



- 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 1988-890 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.

- continued -



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.



Honorable Sally Tanner
 Member of the Assembly
 State Capitol, Room 4146
 Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 2057
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
	AB 3611 (1986)	August 25, 1987

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured 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.

SUMMARY OF CHANGES

This version of the bill makes minor technical and wording changes from the previous analysis of the RN 87 016489 version which do not change our position.

SUMMARY OF COMMENTS

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	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		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/Cont. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cont. Acct.
2740/DMV	SO	C	33	C	7	C	7	054/NMVB

Impact on State Appropriations Limit--Yes

POSITION: Department Director Date
 Neutral

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
(223) R. Baker		Wallis L. Clark		Position noted
<i>R. Baker</i>	<i>8/26/87</i>	<i>Wallis L. Clark</i>	<i>8/26/87</i>	Position approved
				Position disapproved
CJ: BW1/0064A/1045C				by: date:

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

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BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	August 25, 1987	AB 2057

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.

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 the 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, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

ARC-2



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 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	<u>\$145,200</u>

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



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 1987

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

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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ARC-4

STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: September 10, 1987

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ASSEMBLY REPUBLICAN CAUCUS
LIBRARY

Bill No: Assembly Bill 2057 Date Amended: 9/4/87

Author: Tanner Tax: Sales and Use

Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis.
- See Comments

COMMENTS:

The September 4, 1987 amendment incorporates certain provisions of Assembly Bill 276 in order to prevent this bill from chaptering out the amendments made by Assembly Bill 276 in the event that it is enacted prior to Assembly Bill 2057.

Please direct further inquiries to: *MS* Margaret Shedd Boatwright *MS*
(322-3276) *MS*

0321F

ARC-5



	AUTHOR	BILL NUMBER
Department Of Motor Vehicles	Tanner	AB 2057
SUBJECT		AS AMENDED
Warranties: new motor vehicles		Original


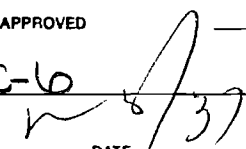
SUMMARY: Requires the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes under the "Lemon Law"; Requires each manufacturer, distributor, and their branches to pay an annual fee not exceeding \$1 for each motor vehicle sold, leased or otherwise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

LEGISLATIVE INTENT SERVICE (800) 666-1917

POSITION	NEUTRAL	GOVERNOR'S OFFICE
DEPARTMENT		POSITION NOTED <input checked="" type="checkbox"/>
AGENCY	Original signed by Allen Goldstein	POSITION APPROVED <input checked="" type="checkbox"/>
DATE	April 21, 1987	POSITION DISAPPROVED <input type="checkbox"/>
	APR 23 1987	ARC-6 
CC:	INV/OL:lm 4-15-87	BY: _____ DATE: _____



This bill would authorize the NMVB 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 programs for collection of the fee from affected occupation licensees. We 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 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.

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.



ARGUMENTS 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



FISCAL IMPACT SUMMARY

FOR AB 2057

OPERATIVE 1-1-88

AS INTRODUCED MARCH 6, 1987

PREPARED 4-15-87

IMPLEMENTATION COSTS:	87/88 FY
Programming to establish flag for mailing reporting forms with renewal notices	\$11,200 (280 hours)
Programming to deposit fees to special fund	<u>12,000 (300 hours)</u>
Total	\$33,200 *

ANNUAL ON-GOING COSTS:

Maintenance of special fund	\$ 5,466
Mailing reporting forms, cashiering, correspondence	<u>1,500</u>
Total	\$ 6,900

* The department will require an appropriation of \$33,200 to cover the costs for FY 87/88.

ASSUMPTIONS:

1. BAR will develop reporting forms to be used by licensees. DMV will consult of fee-collection aspect for the forms development.
2. DMV will mail reporting forms to affected licensees with their renewal notices and will include these forms with new applications for license.
3. When processing returned applications, DMV will cashier the fee paid for the program from the total shown on the reporting form and deposit it to the Certification Account. DMV will correspond with the applicant or licensee if forms and/or fees are not submitted or if amount due on form does not match amount paid. DMV will not otherwise check the forms for accuracy or validity of reporting.
4. Forms will be forwarded to BAR at intervals to be established.

ARC-9



MEMORABLE Sally Tanner
 Member of the Assembly
 State Capitol, Room 4146
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Tanner	BILL NUMBER AB 2057
SPONSORED BY	RELATED BILLS AB 3611 (1986)	AMENDMENT DATE August 25, 1987

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured 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.

SUMMARY OF CHANGES

This version of the bill makes minor technical and wording changes from the previous analysis of the RN 87 016489 version which do not change our position.

SUMMARY OF COMMENTS

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	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		1987-88		1988-89		1989-90		
		FC		FC		FC		
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/Cont. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cont. Acct.
2740/DMV	SO	C	33	C	7	C	7	054/NMVB

Impact on State Appropriations Limit--Yes

POSITION: _____ Department Director _____ Date _____
 Neutral

Principal Analyst 1611aw (223) R. Baker	Date 8/20/87	Program Budget Manager Wallis L. Clark	Date 8/20/87	Governor's Office Position noted Position approved Position disapproved by: _____ date: _____
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CJ:BW1/0064A/1045C

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 1987

AB 2057

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.

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 the 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, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 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.

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 1987

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

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

LEGISLATIVE INTENT SERVICE (600) 566-1977

STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: September 10, 1987

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Bill No: Assembly Bill 2057 Date Amended: 9/4/87

Author: Tanner Tax: Sales and Use

Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis.
- See Comments

COMMENTS:

The September 4, 1987 amendment incorporates certain provisions of Assembly Bill 276 in order to prevent this bill from chaptering out the amendments made by Assembly Bill 276 in the event that it is enacted prior to Assembly Bill 2057.

Please direct further inquiries to: *MS* Margaret Shedd Boatwright
(322-3276) *MS*

0321F

Department of Motor Vehicles

Tender

AB 2057

Warranties: new motor 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	GOVERNOR'S OFFICE	
DEPARTMENT		POSITION NOTED	<input checked="" type="checkbox"/>
AGENCY	Original signed by Allen Goldstein	POSITION APPROVED	<input checked="" type="checkbox"/>
DATE	April 21, 1987	POSITION DISAPPROVED	<input type="checkbox"/>
		BY:	DATE: APR 23 1987
BY:	INV/OL:lm		DATE: 4-15-87

This bill would authorize the NMVB 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 programs for collection of the fee from affected occupation licensees. We 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 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.

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.

ARGUMENTS 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

FISCAL IMPACT SUMMARY

FOR AB 2057

OPERATIVE 1-1-88

AS INTRODUCED MARCH 6, 1987

PREPARED 4-15-87

IMPLEMENTATION COSTS:	87/88 FY
Programming to establish flag for mailing reporting forms with renewal notices	\$11,200 (280 hours)
Programming to deposit fees to special fund	<u>12,000 (300 hours)</u>
Total	\$33,200 *

ANNUAL ON-GOING COSTS:

Maintenance of special fund	\$ 5,466
Mailing reporting forms, cashiering, correspondence	<u>1,500</u>
Total	\$ 6,900

* The department will require an appropriation of \$33,200 to cover the costs for FY 87/88.

ASSUMPTIONS:

1. BAR will develop reporting forms to be used by licensees. DMV will consult of fee-collection aspect for the forms development.
2. DMV will mail reporting forms to affected licensees with their renewal notices and will include these forms with new applications for license.
3. When processing returned applications, DMV will cashier the fee paid for the program from the total shown on the reporting form and deposit it to the Certification Account. DMV will correspond with the applicant or licensee if forms and/or fees are not submitted or if amount due on form does not match amount paid. DMV will not otherwise check the forms for accuracy or validity of reporting.
4. Forms will be forwarded to BAR at intervals to be established.

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.

(More)

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.

(More)

-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

(More)

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.

(More)



- 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

(More)

(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.

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/13/87

Bill No.: AB 2057

Policy Committee: Governmental Efficiency &
Consumer Protection

Vote: 6 - 1

Urgency: No

Hearing Date: 06/03/87

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Allan Lind 

Summary

This bill clarifies California's "lemon law" in various respects; specifies means for dispute resolution and provides for treble damages and attorney's fees to consumers who obtain judgements in their favor against a manufacturer who does not have a certified lemon law arbitration program. The bill requires the Bureau of Automotive Repair (BAR) to enforce provisions of the bill and authorizes BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) for the costs of the bill.

Fiscal

Undetermined costs to BAR to certify arbitration programs.

Undetermined costs to the NMVB to collect fees.

BAR costs offset by fees; NMVB costs are probably absorbable.

Undetermined General Fund costs to reimburse manufacturers for state sales taxes collected by the manufacturer on lemon cars when the manufacturer has to buy back the lemon car, including sales tax, from the customer.

AL:srh



Legislative Analyst
May 30, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Assembly May 13, 1987 and
As Proposed to be Further Amended by LCR No. 016489
1987-88 Session

AB 2057 (Am. 5/13/87 & LCR No. 016489)

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) for the Bureau of Automotive Repair to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program for the resolution of automobile warranty disputes. The program would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill would also change current law pertaining to vehicle warranty procedures and restitution.

LEGISLATIVE INTENT SERVICE (900) 666-1917

Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the bureau to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (4) provide the Legislature with a biennial report evaluating the effectiveness of the program,
- Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. Such fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund, and
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

The BAR indicates it would incur program start-up costs up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning

in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$33,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8



Date of Hearing: May 5, 1987

AB 2057

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY APEIAS, Chairman

AB 2057 (Tanner) - As Amended: April 28, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: new motor vehicles (lemon law).

DIGEST

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 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 judgement against a manufacturer who does not have a certified lemon law arbitration program. Specifically, it:

- continued -

AB 2057

LEGISLATIVE INTENT SERVICE (800) 666-1917

- 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 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.
- 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, however, would be free to take restitution in place of a replacement vehicle.
- 4) Specifies what is 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 must 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 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.
 - 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) 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 and requires 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) 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 judgement and the manufacturer does not maintain a qualified third party dispute resolution process as established by this chapter.

FISCAL EFFECT

This bill will result in unknown costs to the BAR to certify arbitration programs, fully offset by fees charged to vehicle manufactures and distributors. According to the Board of Equalization, enactment of the bill would result in insignificant administrative costs to the board.

COMMENTS

The purpose of this bill, sponsored by 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.

Similar legislation, AB 3611 (Tanner, 1986 Session), generally makes many of the same changes except for the provision in AB 2057 for treble damages. AB 3611 died in the Senate.

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.

- continued -

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.

Policy Questions

The committee may wish to consider the following:

- 1) Are treble damages necessary to ensure that arbitration programs used by manufacturers assist consumers in resolving the problems with their new car?
- 2) If BAR is going to have jurisdiction over the certification of arbitration programs dealing with new car warranty lemon law provisions, should they be given additional authority in the vehicle warranty area, where jurisdiction is presently unclear, since they will get more questions from consumers in that area?
- 3) Are the components of the qualified arbitration program fair to consumers and manufacturers alike? Should the components specify that if a dealer is present and allowed to speak, a consumer should be given equal time?

SUPPORT (verified 5/1/87)

CA Public Interest Research
Group (CalPIRG)

OPPOSITION

Automobile Importers of America
General Motors Corporation
Ford Motor Company

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 -

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.

- continued -

- 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.

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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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.

- continued -

- 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.

- continued -

- 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.

- continued -

- 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

AB 2057
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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session

AB 2057 (Tanner)
As amended June 11
Hearing date: July 14, 1987
Various Codes
TDT

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.

(More)



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.

(More)



-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

(More)



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.

(More)



- 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

(More)



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.



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

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.

(More)



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.

(More)



-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

(More)



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.

(More)



- 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

(More)



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

(More)



- (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.



SENATE COMMITTEE ON JUDICIARY

Arnie

BACKGROUND INFORMATION

AB 2057

677-2103 Sue
677-2159 Ron Peter

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?

Support: CA Public Interest Group OPPOSITION: Ford Motor Co.
 Consumers Union General Motors Corp.
 Motor Voters Automobile Importers of America
 Attorney General 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.

CA-1

1. The rt to jury trial is guaranteed per Art I, Sec 16 of Cal Const, in a civil ~~trial~~ action at law, but not in equity. C & K Engineering v. Amber Steel Co. (1978) 23 C.3d

8. The arbitration/trial de novo issue is valid, Hertent
(1982)
Horn, 133 Cal App 3d 465

2. Penalizing mfg for exercising rt to jury trial: this argument is based on a bootstrapping approach to mobilize supporting authority. The argument that civil penalties are civil in nature is based on a Condord-T case where the LL ~~turned off~~ T's water & electricity, an act which resulted in the statutory imposition of a \$100 daily fine. Ct stated that not all applications of the statute penalty formula wd be unconstl; the propriety of such a sanction must be done on a case by case basis. Hale v. Morgan (1978) 22 Cal 3d 388

As to the pt abt punishment for exercising individual rts being a due process violation, the case cited is a criminal (habeas corpus) action and the ct expressly refers to rts in the context of criminal proceedings. In re Lewallen (1979) 23 Cal 3d 274



Admits since 4/28

① Effect 7/1/88

② Dispute Proc m/do all of:

pg 14 + adds Reqmt that arbitrator can't be party, employee, etc & can't discuss w/ man'nt unless buyer ^{particip}

① Hearings for last rep attempt & time & replacement or reset

pg 17 - Q D R P willfully fails to comply



LEGISLATIVE
ADVOCATES

SACRAMENTO
CALIFORNIA 95814

TELEPHONE
916 444-6034

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.

CA-4

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LEGISLATIVE INTENT SERVICE



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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CA-5

AB 2057

- ① Need way to compel attendance participation in certification process
Punitives wld ~~do this~~
Only applies where no certif'd
Wld allow where willful minor violat
How d it be lmt'd to subst'l viol.
a) Discretionary w/ ct.

- ② Atty fees
Discretionary & if car owner prevails

- ③ AB 3611
Passed ~~judic~~ as is now
except no treble dmgs
& no certifiat
Went to Approp susp file - killed by
Boatwright



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

CA-7

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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

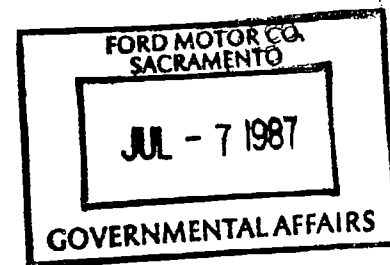
RLD:cme

cc: Honorable Sally Tanner
Consultants, Senate Judiciary Committee ✓

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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.¹ Consumer warranty claims are essentially contract claims,² for which the jury trial right is guaranteed.³ 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.⁴
- 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.⁵ 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."⁶
- 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.⁷ Thus, "the legislature is without power, in the absence of constitutional provision authorizing the same, to confer judicial functions upon a statewide administrative agency."⁸ 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.⁹
- 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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CA-9

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

- 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."¹² 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.¹³
- 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,¹⁴ and thus may only be imposed on the party actually responsible for the wrong,¹⁵ 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.¹⁶



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

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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. Laisne v. California State Board of Optometry, 19 Cal. 2d 831, 834-35, 123 P.2d 457 (1942).
10. Cf. Pylar v. Doe, 457 U.S. 202, 215-17 (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. 547 (1985).
16. Silvercrest Industries, 175 Cal. App. 3d at 227. CA-13



JACK I. HORTON
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JERRY L. BASSETT
STANLEY M. LOURIMORE
EDWARD K. PURCELL
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Legislative Counsel of California

BION M. GREGORY

July 13, 1987

Assemblywoman Sally Tanner

A.B. 2057 - Conflict

GERALD ROSS ADAMS
MARTIN L. ANDERSON
PAUL ANTILLA
DANA S. APPLING
CHARLES C. ASBILL
RANEENE P. BELISLE
AMELIA I. BUDD
EILEEN J. BUXTON
HENRY J. CONTRERAS
BEN E. DALE
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SHARON R. FISHER
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L. DOUGLAS KINNEY
VICTOR KOZIELSKI
EVE B. KROTINGER
DIANA G. LIM
ROMULO I. LOPEZ
JAMES A. MARSALA
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MARY SHAW
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
MICHAEL H. UPSON
RICHARD B. WEISBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JANA T. WHITGROVE
DEBRA J. ZIDICH
CHRISTOPHER ZIRKLE
DEPUTIES

LEGISLATIVE INTENT SERVICE (800) 666-1917

The above measure, introduced by you, which is now set for hearing in the Senate Judiciary Committee appears to be in conflict with the following other measure(s):

A.B. 2050-Tanner	S.B. 71-Leroy Greene
A.B. 282-Statham	S.B. 205-Kopp
A.B. 343-Cortese	S.B. 263-Rogers
A.B. 410-Frazee	S.B. 1028-Morgan
A.B. 735-McClintock	S.B. 1349-Nielsen
A.B. 901-Mountjoy	
A.B. 1635-Dennis Brown	
A.B. 276-Eaves	
A.B. 1367-Tanner	

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

CA-14

OFFICE OF THE DIRECTOR

DEPARTMENT OF MOTOR VEHICLES

P. O. BOX 932328

SACRAMENTO, CA 94232-3280



August 13, 1987

Honorable Sally Tanner
Member of the Assembly
State Capitol - Room 4146
Sacramento, CA 95814

Dear Assemblywoman Tanner,

The Department of Motor Vehicles has completed its analysis of your bill, AB 2057, as amended June 11, 1987. The bill requires this department to collect a \$1 fee for each vehicle sold, leased or distributed by motor vehicle manufacturers and distributors. These monies would be used to fund a Third-Party Dispute Resolution Program administered by the Bureau of Automotive Repair.

While we have no problem with this concept, we must point out that the bill will cause us to incur implementation costs of \$25,334 in order to have the collection mechanisms in place by the July 1, 1988 operative date. Therefore, we would ask that an appropriation be included in the bill to provide the required funding.

Attached is our fiscal impact statement and an itemization of the costs involved. We have also taken the liberty of attaching suggested amendment language which would provide the requested amount.

Thank you for your consideration of this request. If I can provide any additional information or clarification regarding this data, please feel free to contact me at your convenience.

Respectfully,

Rebecca Ferguson
Legislative Liaison Officer

Attachment

cc: Senate Judiciary Committee

CA-15

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 2057 (Tanner) Warranties: New motor vehicles
4-28-87, 5-13-87
& 6-11-87

FISCAL IMPACT SUMMARY

Amended June 11, 1987

ASSUMPTIONS:

1. BAR will develop the reporting form to be used by licensees. DMV will consult on the fee-collection aspect for form development.
2. DMV will mail the reporting form to affected licensees with their renewal notices and will include the form with new license applications.
3. When processing returned applications, DMV will cashier the fee paid for the program from the total shown on the reporting form and deposit it to the Certification Account. DMV will correspond with the applicant or licensee if forms and/or fees are not submitted or if the amount due on the form does not match the amount paid. DMV will not otherwise check the forms for accuracy or validity of reporting.
4. Forms will be forwarded to BAR at established intervals.

IMPLEMENTATION COSTS:

87/88 FY

Programming to establish
flag for mailing reporting
forms with renewal notices:

\$11,200 (280 hours)

Programming to deposit fees
to special fund

12,000 (300 hours)

Notice to affected licensees.
Coordination of reporting
form and procedure development
with BAR.

2,134 (.13PY)

Total

\$25,334*

ANNUAL ON-GOING COSTS:

Maintenance of special fund

\$ 5,466

Mailing reporting forms,
cashiering, correspondence

1,500

Total

\$ 6,966

* The department will require an appropriation of \$25,334 to cover the costs for FY 87/88.

CA416

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LEGISLATIVE INTENT SERVICE



AB 2057 (Tanner) Warranties: New motor vehicles
4-28-87, 5-13-87
& 6-11-87

AMENDMENT

On page 8, before line 23, INSERT:

(t) An appropriation in the amount of twenty-five thousand three hundred thirty-four dollars (\$25,334) shall be made to the Department of Motor Vehicles for implementation purposes.





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.



Memorandum

To : District Administrators

Date : January 7, 1988

From : Glenn A. Bystrom
Principal Tax Auditor

Subject : "Lemon Law" Notice Mailed to Motor Vehicle Manufacturers and Distributors

Assembly Bill 2057, Statutes of 1987, revised the Civil Code provisions related to the California "Lemon Law". Sections 1793.2 and 1793.25 of that code now require the Board to 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. These new provisions took effect January 1, 1988 and apply to refunds resulting from arbitrators' decisions made on and after that date.

The attached notice will be mailed on January 7, 1988, to 128 motor vehicle manufacturers and distributors. The notice is self-explanatory and refers recipients with questions to their local Board office. Please advise your staff of this notice. An operations memo explaining this change in the law will be distributed very soon.

GAB:gjm
0154W

Attachment

cc: Headquarters Audit Supervisors
Headquarters Compliance Supervisors

(800) 666-1917

LEGISLATIVE INTENT SERVICE



B-1

State Board of Equalization
Department of Business Taxes

OPERATIONS MEMO

No: 907
Date: January 8, 1988

SUBJECT: Reimbursement of Sales Tax Refunded Under the "Lemon Law"

GENERAL

Effective January 1, 1988, Assembly Bill 2057 (Chapter 1280, Statutes of 1987) amended Sections 1793.2, and 1794 and added Section 1793.25 to the Civil Code. These sections, commonly known as the California "Lemon Law", now require the Board to 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 of a defective vehicle. Section 7102 of the Sales and Use Tax Law was amended to allow refunds pursuant to Section 1793.25.

BACKGROUND

The Lemon Law became effective January 1, 1983 and provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law either to replace the automobile or reimburse the consumer for the purchase price. The manufacturer may reduce the purchase price by an amount attributable to the value of the use made before the defect was discovered.

Prior to January 1, 1988, sales tax refunds paid by manufacturers as restitution to purchasers of defective vehicles were not reimbursable by the Board because refunds or replacements made under the arbitration process did not qualify as credits for returned merchandise. The law also required that the full selling price (less rehandling and restocking costs, but without any deduction for usage) be refunded in order to qualify for a returned merchandise credit.

PROVISIONS

For purposes of the Lemon Law, the term "manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch. "New motor vehicle" means a new passenger or commercial motor vehicle which is bought primarily for personal, family or household purposes. The term does not include a motorcycle, a motor home, or any vehicle with a gross weight over 10,000 pounds. Dealer owned vehicles, including demonstrators, are covered under the Lemon Law.

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LEGISLATIVE INTENT SERVICE



Beginning January 1, 1988, the Board is authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which they include in refunds to buyers pursuant to an arbitrator's decision. Satisfactory proof must be provided that the retailer of the motor vehicle (for which the manufacturer is making restitution) has reported and paid the sales tax on that motor vehicle.

When the buyer chooses to have a vehicle replaced, the new vehicle is considered a replacement under warranty and the tax liability is measured only by the amount the customer pays in excess of the credit received.

When the buyer chooses restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including any sales tax and any incidental damages to which the buyer is entitled. The manufacturer may deduct for usage of the defective vehicle and any amount charged for nonmanufacturer items installed by the dealer. These amounts must be deducted from the original vehicle selling price before calculating the sales tax refund.

The buyer is liable for use of the defective vehicle prior to the time the buyer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to use by the buyer will be calculated by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the buyer.

These newly-enacted Civil Code provisions in no 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, of tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

CLAIMS FOR REFUND

Manufacturers may file a claim for refund with the Board with respect to any amounts refunded to buyers after December 31, 1987. All claims should be forwarded to the Audit Review and Refund Unit for processing.

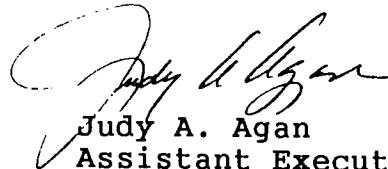


NOTICE MAILED

A special notice was mailed to all identified motor vehicle manufacturers and distributors explaining the provisions of Assembly Bill 2057 which affect the Sales and Use Tax Law (copy of notice attached). This law contains other provisions not related to the Sales and Use Tax Law. Inquiries related to other provisions of this law should be referred to the California State Bureau of Automotive Repair.

OBSOLESCENCE

This operations memo will become obsolete after its provisions are incorporated into the appropriate manuals, pamphlets, and the Business Taxes Law Guide.



Judy A. Agan
Assistant Executive Secretary
Business Taxes

Attachment
Distribution 1-D
0139W





STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

NOTICE TO MOTOR VEHICLE MANUFACTURERS AND DISTRIBUTORS

MANUFACTURERS MAY NOW RECEIVE
REIMBURSEMENT FOR CALIFORNIA SALES TAX
REFUNDED TO BUYERS OF DEFECTIVE VEHICLES

Assembly Bill 2057 (Chapter 1280, Statutes of 1987) amends Sections 1793.2, 1794, and adds Section 1793.25 to the Civil Code, effective January 1, 1988. These sections are commonly known as the California "Lemon Law".

The Lemon Law provides an arbitration process to resolve disputes between manufacturers and consumers of new cars which are purported to have major manufacturing defects. This law stipulates that if an arbitrator's judgment is in favor of the buyer, the manufacturer must replace the vehicle or make restitution. In the case of replacement, the new vehicle is considered a replacement under warranty and the tax liability is measured only by the amount the customer pays in excess of the credit received. In the case of restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including applicable sales tax. Previously, manufacturers were not entitled to reimbursement for the amount of California sales tax refunded to buyers.

Effective January 1, 1988, the State Board of Equalization is authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which the manufacturer includes in making restitution to the buyer. For purposes of this law a "new motor vehicle" means a motor vehicle bought for personal, family, or household use; but does not include a motorcycle, motorhome or commercial vehicle over 10,000 pounds. Satisfactory proof must be provided that the retailer of the motor vehicle reported and paid the sales tax on the original sale of the motor vehicle.

When making restitution, the manufacturer may deduct an amount for the buyer's usage of the defective vehicle and any amount charged for nonmanufacturer items installed by the dealer. These amounts, as well as amounts exempt from tax in the original sale must be deducted from the original vehicle selling price before calculating the sales tax refund.

Claims for reimbursement of sales tax refunded to buyers under the Lemon Law should be directed to the California State Board of Equalization, Audit Review and Refund Unit, P.O. Box 942879, Sacramento, CA 94279-0001.

A list of Board of Equalization offices and their telephone numbers is included on the reverse side of this notice. If you have any questions about this newly-enacted legislation please contact them.

STATE BOARD OF EQUALIZATION

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12/87

LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA STATE BOARD OF EQUALIZATION OFFICES

10-87

BOARD MEMBERS

DISTRICT	MEMBER	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
First	William M. Bennett	1020 N Street, Sacramento 95814	916	445-4081
Second	Conway H. Collis	901 Wilshire Blvd., Suite 210, Santa Monica 90401	213	451-5777
Third	Ernest J. Dronenburg, Jr.	110 West C Street, Suite 1709, San Diego 92101	213	852-502
Fourth	Paul Carpenter	4040 Paramount Blvd., Suite 103, Lakewood 90712	619	237-7844
EXECUTIVE SECRETARY			213	429-5422
	Douglas D. Bell	1020 N Street, Sacramento 95814	916	445-3956

SACRAMENTO HEADQUARTERS

1020 N Street, Sacramento 95814 916 445-6464

BUSINESS TAXES FIELD OFFICES

CALIFORNIA CITIES	OFFICE HOURS 8-5 UNLESS OTHERWISE LISTED BELOW	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
Arcadia		20 East Foothill Boulevard, 91006	818	350-6401
Arroyo Grande		1303 Grand Avenue, Suite 115, 93420	213	681-6675
Auburn	8-12 & 1-5 M thru F	550 High Street, Suite 3, 95603	805	489-6293
Bakersfield		525 18th Street, 93301	916	885-8408
Bishop	8-12 & 1-5 M thru F	407 West Line Street, 93514	805	395-2880
Chico	8-12 & 1-5 M thru F	8 Williamsburg Lane, 95926	619	872-3701
Covina		233 North Second Avenue, 91723	916	895-5322
Crescent City	8-12 & 1-5 M thru F	Suite 2, 1080 Mason Mall, 95531	818	331-6401
Culver City		3861 Sepulveda Blvd., 2nd Floor, 90230	213	686-2990
Downey		11229 Woodruff Avenue, 90241	707	464-2321
El Centro	8-12 & 1-5 M thru F	1699 West Main Street, Suite H, 92243	213	313-7111
Eureka	8-12 & 1-5 M thru F	1656 Union Street, 95501	213	879-0600
Fresno		2550 Mariposa Street, State Building, Rm. 2080, 93721	213	803-3471
Hayward		795 Fletcher Lane, 94544	213	803-3471
Hollywood		5110 Sunset Boulevard, 90027	213	773-3480
Lakewood		Suite 101, 4040 Paramount Blvd., 90712-4199	619	352-3431
Marysville		922 G Street, 95901	707	445-6500
Merced	8-12 & 1-5 M thru F	3191 M Street, Suite A, 95340	209	445-5285
Modesto		1020 15th Street, Suite E, 95354	209	881-3544
Nevada City	8-12 & 1-5 M thru F	301 Broad Street, 95959	213	663-8181
Oakland		1111 Jackson Street, 94607	213	421-3295
Ontario		320 West G Street, Suite 105, 91762	213	636-2466
Oroville	8-12 & 1-5 M thru F	2445 Oro Dam Boulevard, Suite 3A, 95966	916	741-4301
Palmdale	8-12 & 1-5 M thru F	37925 6th Street East, 93550	209	383-2831
Placerville	8-12 & 1-5 M thru F	344 Placerville Dr., Ste. 12, 95667	209	576-636
Pleasant Hill		395 Civic Drive, Suite D, 94523	916	265-4626
Quincy	9-1 M thru F	546 Lawrence Street, 95971	415	464-0347
Rancho Mirage	8-12 & 1-5 M thru F	42-700 Bob Hope Dr., Suite 301, 92270	714	983-5969
Redding		391 Hemsted Drive, 96001	916	538-2246
Sacramento		1891 Alhambra Boulevard, 95816	805	947-8911
Salinas		21 West Laurel Drive, Suite 79, 93906	916	622-1101
San Bernardino		303 West Third Street, Suite 500, 92401	415	687-6962
San Diego		1350 Front Street, Room 5047, 92101	916	283-1070
San Francisco		350 McAllister Street, Room 2262, 94102	619	346-8096
San Jose		100 Paseo de San Antonio, Room 307, 95113	916	225-2725
San Marcos		365 So. Rancho Santa Fe Road, 92069	916	739-4911
San Mateo		177 Bovet Road, Suite 250, 94402	408	443-3008
San Rafael		7 Mt. Lassen Drive, Suite B136, 94903	714	383-4701
Santa Ana		28 Civic Center Plaza, Room 239, 92701	619	237-7731
Santa Barbara		411 East Canon Perdido Street, Room 11, 93101-1589	415	557-1877
Santa Cruz	8-12 & 1-5 M thru F	303 Water Street, Suite 6, 95062	408	277-1231
Santa Rosa		50 D Street, Room 215, 95404	619	744-1330
Sonora	8-12 & 1-5 M thru F	1194 N. Highway 49, 95370	415	573-3578
South Lake Tahoe	8-12 & 1-5 M thru F	2489 Lake Tahoe Boulevard, Suite 7, 95705	415	472-1513
Stockton		31 East Channel Street, Room 264, 95202	714	558-4051
Susanville	9-1 M thru F	63 North Roop Street, 96130	805	965-4535
Torrance		690 W. Knox Street, 90502-1307	408	458-4861
Ukiah	8-12 & 1-5 M thru F	620 Kings Court, Suite 110, 95482	707	576-2100
Vallejo		704 Tuolumne Street, 94950-4769	209	532-6979
Van Nuys		6150 Van Nuys Blvd., Room 205, 91401-3382	916	544-4816
Ventura		2590 East Main Street, Suite 101, 93003	209	948-7720
Visalia		111 South Johnson Street, Suite E, 93291	916	257-3429
Woodland	8-12 & 1-5 M thru F	98 West Main Street, Suite 2, 95695	213	516-4300
Yreka	8-12 & 1-5 M thru F	1217 South Main Street, 96097	213	770-4148
OUT-OF-STATE FIELD OFFICES			707	463-4731
Sacramento (Hqtrs.)		1820 14th Street, 95814	707	648-4065
Chicago, Illinois		150 North Wacker Drive, Room 1400, 60606	818	901-5293
New York, N.Y.		675 Third Avenue, Room 520, 10017	805	654-4523
			209	732-564
			916	662-733
			916	842-7439

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LEGISLATIVE INTENT SERVICE (800) 666-1917

State Board of Equalization
Department of Business Taxes

OPERATIONS MEMO

No. 900
DATE: November 18, 1987

SUBJECT: 1987 Legislation

General

The following is a brief summary of the provisions of the statutes enacted during the 1987 Legislative Session.

Copies of bills containing these statutes are included in the "1987 Business Tax Legislation" pamphlet which will be distributed to Headquarters and District Managers. Refer to that pamphlet for complete provisions of the new statutes.

An index showing sections of the Business Tax Law and other relevant codes affected by newly enacted statutes and corresponding bill numbers will be furnished under separate cover to holders of the Business Taxes Law Guide. This index should be inserted in the Law Guide and affected sections of the existing law noted until revisions to the Law Guide are distributed.

Assembly Bill 57 (1987) Chapter 1352

This act adds Section 6368.2 to the Sales and Use Tax Law to exempt from the sales and use tax the sale of, and the storage, use, or other consumption in this state of, diesel fuel used in operating watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in these business activities outside the territorial waters of this state.

The operators are considered regularly engaged in such operations if their gross receipts from such operations equal or exceed \$5,000 a year.

"Commercial passenger fishing boat operations" means the business of permitting for profit any person to fish from the operator's watercraft.

This exemption will be effective during the calendar year 1988, unless changed by future statutes.

Effective date: January 1, 1988

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Assembly Bill 99 (1987) Chapter 384

This act amends Section 6369 of the Sales and Use Tax Law to exempt from the sales and use tax the sale, and the storage, use, or other consumption in this state of, orthopedic shoes and supportive devices for the foot which are custom-made biomechanical foot orthoses.

The act also extends the exemption for orthotic and prosthetic devices, and replacement parts for these devices, when furnished pursuant to the written order of a podiatrist.

Effective date: September 3, 1987

Assembly Bill 229 (1987) Chapter 1144

The act may amend Sections 6471 and 6474 of the Sales and Use Tax Law to raise the prepayment threshold from \$17,000 per month to \$50,000 per month and may amend Sections 6472 and 6477 to delete obsolete references to Section 6471.5. These amendments will become operative only if 1) the Attorney General certifies to the Legislature and to the Executive Secretary of the Board that the amendments to Section 6203 of the Revenue and Taxation Code made by Assembly Bill 677, Chapter 1145, Statutes of 1987, are legally enforceable under the United States Constitution and 2) the Department of Finance certifies to the Legislature that revenues attributable to the registration of additional out-of-state retailers are being remitted to the Board.

Effective date: January 1, 1988

Assembly Bill 257 (1987) Chapter 1095

This act amends Section 6354 of the Sales and Use Tax Law to delete the January 1, 1988, sunset date for the exemption from sales and use tax for the sale of and the storage, use or other consumption in this state of, commemorative "California Gold" medallions. Therefore, the exemption is effective indefinitely.

Effective date: September 25, 1987

Assembly Bill 293 (1987) Chapter 38

This act does the following:

1. Amends Section 6703 of the Sales and Use Tax Law to provide that the Board's notice of levy on a tax liability has the same effect as a judgment creditor's levy pursuant to a writ of execution,

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2. Amends Section 6736 of the Sales and Use Tax Law to extend from three (3) years to ten (10) years the period of time in which the Board may file a certificate to obtain a judgment against a tax debtor,

3. Amends Section 6829 of the Sales and Use Tax Law to provide that personal liability shall be imposed against responsible corporate officers, if the Board can establish that the corporation included use tax on a billing and collected the use tax from customers, or issued a receipt for use tax, and failed to report and pay use tax,

4. Amends Sections 6901.5 and 6904 of the Sales and Use Tax Law to provide that a claim for refund filed for or on behalf of a class of taxpayers must be accompanied by written authorization from each taxpayer sought to be included in the class and that the authorization must be signed by each taxpayer or taxpayer's authorized representative and must state the specific grounds on which the claim is founded.

5. Amends Section 7657 of the Motor Vehicle Fuel License Tax Law to provide that the penalty for late prepayment of motor vehicle fuel license tax may be relieved if the Board finds that a person's failure to make the timely prepayment is due to reasonable cause and circumstances beyond the person's control,

6. Amends Section 8651.7 of the Use Fuel Tax Law to provide that annual flat rate use fuel tax is paid for the annual period from the end of the month in which the tax was paid to the end of the month prior in the following calendar year,

7. Amends Section 41056 of the Emergency Telephone Users Surcharge Act to require a service supplier to maintain for four years any records which are necessary to determine the amount surcharge collected,

8. Amends Section 1.5 of Chapter 825 of the Statutes of 1986 to provide that a transaction regarded under Section 6006.3 of the Sales and Use Tax Law as a sale under a security agreement to any state or local governmental body, or any agency or instrumentality thereof, entered into prior to January 1, 1987, the full term of which has not expired or has not been earlier terminated, is classified as a sale on January 1, 1987 and as a lease for earlier periods. The act also amends the same section to provide that any sales or use tax, but not interest on the sales or use tax previously paid, will be credited against any sales or use tax due on the transaction, and provides that the amendments of this section are declaratory of existing law, and

9. Makes technical changes to Section 7916 of the Motor Vehicle Fuel License Tax Law and Section 41015 of the Emergency Telephone Users Surcharge Act.

Effective date: January 1, 1988

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Assembly Bill 320 (1987) Chapter 556

This act amends Section 41007 of the Emergency Telephone Users Surcharge Act to provide that the term "service supplier" includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

Effective date: January 1, 1988

Assembly Bill 386 (1987) Chapter 163

This act repeals Part 22 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, the California Universal Telephone Service Act, except that appropriations from the Universal Telephone Service Fund for specified purposes will be continued until July 1, 1988.

The act also continues the Universal Lifeline Telephone Service Program, but the program is now administered by the Public Utilities Commission.

Effective date: July 16, 1987

Assembly Bill 454 (1987) Chapter 921

This act repeals Section 7062 of the Sales and Use Tax Law which required the Board to determine the amount of sales tax in the 1987 tax year attributed to sales to operators of waterborne vessels and to report that amount to the Legislature on or before July 1, 1988.

Effective date: September 22, 1987

Assembly Bill 538 (1987) Chapter 278

This act makes a technical amendment to Section 6363.6 of the Sales and Use Tax Law, retroactive to January 1, 1985, to restore the exemption from sales tax for sales of meals and food products served to and consumed by residents or patients of an alcoholism recovery facility. That exemption was technically repealed when a January 1, 1985 amendment to the Health and Safety Code made the section reference in the Sales and Use Tax Law obsolete.

Effective date: July 30, 1987



Assembly Bill 677 (1987) Chapter 1145

This act amends Section 6203 of the Sales and Use Tax Law to broaden the definition of "retailer engaged in business in this state". The expanded definition includes:

1. Any retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system which is intended by the retailer to be broadcast to consumers located in this state,
2. Any retailer who contracts with a California broadcaster or publisher for advertising of tangible personal property directed primarily to California consumers,
3. Any retailer who solicits orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking financing, debt collection or other activities occurring in this state,
4. Any retailer owned or controlled by the same interests which own or control any retailer engaged in business in the same or a similar line of business in this state,
5. Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under Section 6203, and
6. Any retailer who advertises through cable television home shopping programs.

Effective date: January 1, 1988

Assembly Bill 730 (1987) Chapter 647

This act amends Section 7552 of the Government Code to revise the design requirements of the commemorative "California Gold" medallion. The side which was previously required to show the State Bear may now show any emblem of the State of California. Any new design must be approved by the Department of General Services.

Effective date: January 1, 1988



Assembly Bill 999 (1987) Chapter 1257

This act adds Section 7252.9 and Chapter 2 (commencing with Section 7285) to the Transactions and Use Tax Law to authorize any board of supervisors of any county with a population of 350,000 or less on January 1, 1987 to impose an additional transactions and use tax of one-half of 1 percent if the ordinance or resolution proposing that tax is approved by a 2/3 vote of all members of the board and the tax is approved by a majority vote of the qualified voters.

Effective date: January 1, 1988

Assembly Bill 1087 (1987) Chapter 1103

This act adds Section 6373 to the Sales and Use Tax Law to exempt from the sales and use tax the sale of, and the storage, use, or other consumption of tangible personal property the gross receipts of which are received in the form of food stamp coupons acquired by the purchaser pursuant to the Food Stamp Act of 1977.

The act also provides that, instead of separately accounting for gross receipts exempt by this act, a retailer may take a deduction on each sales tax return equal to two (2) percent of the total amount of food stamp coupons redeemed during the period for which the return is filed.

Effective date: October 1, 1987

Assembly Bill 1308 (1987) Chapter 1417

This act does the following:

1. Amends Sections 25174.02 and 25174.6 of the Health and Safety Code to extend from April 1, 1988 to July 1, 1988 the termination of the adjustment formula for hazardous waste disposal fees and the termination of the criteria for surface impoundments,
2. Amends Section 25174.7 of the Health and Safety Code to exempt from the disposal fee and the generator fee hazardous wastes generated or disposed of by a) state and local agencies operating a household hazardous waste collection program or by b) local vector control agencies or county agricultural commissioners meeting specified requirements,
3. Amends Section 25205.1 of the Health and Safety Code to exclude from the definition of "facility" any facility operated by a local government agency which is used for hazardous wastes which are generated or disposed of by local vector control agencies or county agricultural commissioners meeting specified requirements, and



4. Amends Section 25205.8 of the Health and Safety Code to extend from April 1, 1988 to July 1, 1988 the termination date for the annual facility fee upon operators of specified hazardous waste storage, treatment and disposal facilities.

Effective date: January 1, 1988

Assembly Bill 1389 (1987) Chapter 175

This act amends Section 6103.2 of the Government Code to authorize the sheriff, marshal or constable to require prepayment of fees by public agencies with respect to service of process or official notices.

Effective date: January 1, 1988

Assembly Bill 1542 (1987) Chapter 1483

This act amends Section 25143.6 of the Health and Safety Code to require specified California regional water quality control boards to designate, in accordance with a specified resolution of the State Water Resources Control Board, by February 15, 1988, at least one class III landfill in each region authorized to accept and dispose of shredder waste which does not pose a threat to human health or water quality.

The act also adds Section 25143.8 to the Health and Safety Code to prohibit the department, until January 1, 1989, from prohibiting the disposal of shredder waste in an appropriate class III landfill designated by a regional board if the producer of the waste carries out specified monitoring requirements, maintains records, and tests stored shredder waste, as specified, and the department determines that the waste will not pose a threat to human health or water quality and will be disposed of within a specified time.

The act exempts shredder waste disposed of pursuant to the provisions of the act from any hazardous waste fee or tax imposed pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of the Health and Safety Code.

Effective date: January 1, 1988

Assembly Bill 1555 (1987) Chapter 1064

This act adds Section 7153.5 to the Sales and Use Tax Law, Section 9354.5 to the Use Fuel Tax Law, Section 30480 to the Cigarette Tax Law, Section 40187 to the Energy Resources Surcharge Law, and Section 41143.4 to the Emergency Telephone Users Surcharge Law. The act makes it a felony for any person to commit specified violations with intent to defeat or evade the determination of tax liability of \$25,000 or more in any 12-month period for those state tax programs.

Effective date: January 1, 1988



Assembly Bill 1637 (1987) Chapter 270

This act authorizes the San Bernardino County Board of Supervisors and the Riverside County Board of Supervisors to adopt and submit to the voters for approval, by majority vote, an ordinance authorizing the county to impose a retail transactions and use tax at a rate which does not exceed one-half of 1 percent.

Effective date: July 28, 1987

Assembly Bill 1855 (1987) Chapter 533

This act amends Section 25353 of the Health and Safety Code to provide that the State Department of Health Services may expend funds from the state account or the Hazardous Substance Cleanup Fund for the costs to oversee the removal or remedial action by another party at a site owned by the federal government or a state agency. If a hazardous substance release site is owned or operated by a local governmental entity and the Department expends funds from the state account or the Hazardous Substance Cleanup Fund to take a removal or remedial action, the funds are considered a loan which must be repaid.

If the local agency does not make adequate progress toward repaying the loan made pursuant to this act, one method of collection provided by the act is that the Department may notify the Board of Equalization of the amount due. The Board will then withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made to the local governmental entity, in sufficient amounts to result in complete payment within a specified period.

Effective date: January 1, 1988

Assembly Bill 2057 (1987) Chapter 1280

This act adds Section 1793.25 to the Civil Code to amend the "Lemon Law". The added section requires the Board to 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.

The act also amends Section 7102 of the Sales and Use Tax Law to authorize the use of money in the Retail Sales Tax Fund for refunds made pursuant to Section 1793.25 of the Civil Code.

Effective date: January 1, 1988



Assembly Bill 2072 (1987) Chapter 328

This act amends Sections 26721, 26725, 26725.1, 26726, 26727, 26728, 26728.1, 26729, 26730, 26733.5, 26734, 26736, 26738, 26740, 26741, 26742, 26743, 26744, and 26750 of the Government Code to authorize increases of sheriff's fees for various services related to the preparation, serving, execution or delivery of various documents, notices, writs, and certificates.

Effective date: January 1, 1988

Assembly Bill 2446 (1987) Chapter 308

This act amends Section 7262 of the Transactions and Use Tax Law to require all retailers of registered vehicles, undocumented vessels, and licensed aircraft to collect the transactions use tax from any purchaser who registers the vehicle, vessel or aircraft at an address in a district which imposes transactions and use tax. This does not change the retailers' transaction (sales) tax responsibilities.

The act also adds Section 7274 to the Transactions and Use Tax Law to require the board to make available to all affected retailers information concerning the cities and counties located within districts which impose transactions and use tax and the applicable tax rates in those cities and counties.

Effective date: January 1, 1988

Assembly Bill 2448 (1987) Chapter 1319

This act adds Chapter 4 (commencing with Section 66799) to Title 7.3 of the Government Code and adds Part 23 (commencing with Section 450010 to Division 2 of the Revenue and Taxation Code. The added sections establish various regulatory controls and enforcement procedures for the cleanup and maintenance of solid waste landfills.

Section 66799.49 of the Government Code and Section 45151 of the Revenue and Taxation Code provide that every operator of a solid waste landfill required to have a solid waste facilities permit shall pay an annual fee to the Board of Equalization on all solid waste disposed at each disposal site on and after January 1, 1989. Each feepayer shall report, on or before March 1 of each year, the amount of solid waste handled at each disposal site. The fee shall be established by the Board so that total receipts of approximately twenty million dollars (\$20,000,000) are collected each calendar year. The Board will mail billings which indicate the amount due, and the fee must be paid on or before July 1 of each year. The other sections of Part 23 of the Revenue and Taxation Code establish the procedures for administration of the fee.

Effective date: September 28, 1987

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Assembly Bill 2505 (1987) Chapter 1258

This act creates the San Diego County Regional Justice Facility Financing Agency and authorizes the agency to impose a transactions and use tax at a rate of one-half of 1 percent, upon approval of a majority of the electors of the county voting thereon.

Effective date: January 1, 1988

Assembly Bill 2609 (1987) Chapter 915

This act amends Section 6006 and 6010 of the Sales and Use Tax Law to clarify that the lease of an animated motion picture is excluded from the definitions of "sale" and "purchase" and are therefore exempt from the sales and use tax,

The act also states legislative intent that the Board of Equalization, in promulgating regulations, determine that charges for animation, as used in the production of animated motion pictures, are not taxable.

Effective date: September 21, 1987

Senate Bill 121 (1987) Chapter 1300

This act adds Section 6359.2 to the Sales and Use Tax Law to partially exempt from the sales tax sales of food products (other than hot prepared food products) through vending machines at a sales price greater than \$0.15. The following percentages of gross receipts from the retail sale of those food products will be exempt: 23% for the calendar year 1988, 45% for the calendar year 1989, and 67% thereafter.

The act also amends Section 6359.4 of the Sales and Use Tax Law to provide that a vending machine operator is a consumer of, and shall not be considered a retailer of, food products, other than beverages or hot prepared food products, which are sold through a coin-operated bulk vending machine for \$0.25 or less. The act defines "bulk vending machine" as "a vending machine containing unsorted food products ...which, upon insertion of a coin, dispenses those food products in approximately equal portions, at random, and without selection by the customer."

Effective date: January 1, 1988

Senate Bill 142 (1987) Chapter 786

This act authorizes any county board of supervisors to create or designate a local transportation authority in the county. Further, the act provides that the authority may, by a 2/3 vote thereof and upon subsequent voter approval, impose a retail transactions and use tax of up to one percent.

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The act also requires the Board to prepare an annual report on the costs incurred by it in administering the transactions and use taxes imposed by districts.

Effective date: January 1, 1988

Senate Bill 190 (1987) Chapter 210

This act does the following:

1. Amends Section 6480 of the Sales and Use Tax Law to provide that, for the purposes of the prepayment provisions related to sales of motor vehicle fuel, aviation gasoline is excluded from the definition of "motor vehicle fuel,"

2. Amends Section 6480.1 of the Sales and Use Tax Law to provide that the Board may readjust the rate of the prepayment on sales of motor vehicle fuel more often than once each year, if the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability,

3. Amends Section 6480.6 of the Sales and Use Tax Law to provide that a refund may be granted to any person who is unable to collect the prepayment of sales tax on transfers of motor vehicle fuel insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes, and

4. Amends Section 6901 of the Sales and Use Tax Law to provide that a refund of any prepayment of sales tax, interest or penalty paid on a transfer of motor vehicle fuel, as required by Article 1.5 (commencing with Section 6480) of Chapter 5 of the Sales and Use Tax Law, does not require approval of the State Board of Control..

Effective date: July 23, 1987

Senate Bill 312 (1987) Chapter 1213

This act amends Section 6370 of the Sales and Use Tax Law to provide that nonprofit parent cooperative nursery schools are consumers rather than retailers of tangible personal property sold by them, if the profits are used exclusively in furtherance of the purposes of the organization.

Effective date: January 1, 1988



Senate Bill 522 (1987) Chapter 1471

This act amends Section 6369.4 of the Sales and Use Tax Law to exempt from the sales and use tax the sale of, and the storage, use, or other consumption in this state the gross receipts attributable to that portion of a vehicle which has been modified previously for physically handicapped persons. The exemption is valid only when the modified vehicle is sold to a disabled person who is eligible to be issued a distinguishing license plate or placard for parking purposes pursuant to Section 22511.5 of the Vehicle Code.

Effective date: January 1, 1988

Senate Bill 576 (1987) Chapter 1323

This act adds Section 7262.5 to the Transactions and Use Tax Law to authorize the County of Mendocino to impose a transactions and use tax at the rate of one-half of 1 percent or one percent, if an ordinance imposing the tax is approved by the voters.

Effective date: January 1, 1988

Senate Bill 597 (1987) Chapter 1266

This act amends Section 6365 of the Sales and Use Tax Law to exempt from the sales and use tax the sale of, and the storage, use or other consumption in this state of, original works of art purchased by state or local governments for display to the public in public places. These places should be open to the public not less than 20 hours per week for at least 35 weeks of the calendar year.

The act also amends Section 6366.3 of the Sales and Use Tax Law to exempt from the sales or use tax the sale of, and the storage, use or other consumption in this state of, tangible personal property purchased by state or local governments, for display to the public, which has value as a museum piece and is used exclusively for display purposes, to the same extent that such property is exempt when sold to a nonprofit museum.

Effective date: January 1, 1988

Senate Bill 877 (1987) Chapter 1027

This act amends Section 8352.8 of the Motor Vehicle Fuel License Tax Law to revise the purposes for the use of the Off-Highway Vehicle Fund moneys and include enforcement of laws and regulations regarding the use of off-highway vehicles within their purposes.

Effective date: January 1, 1988



Senate Bill 971 (1987) Chapter 868

This act amends Sections 6103.8, 7171 and 7174 of the Government Code to provide that, if a notice of state tax lien which has been recorded reflects an out-of-state address as the last known address of the taxpayer, the agency must pay specified fees relating to the recording, indexing, and release of those liens. Further, the act permits the agency recording the notice of state tax lien to collect from the taxpayer the cost of recording.

Effective date: January 1, 1988

Senate Bill 1573 (1987) Chapter 503

This act amends Section 11614 of the Vehicle Code to provide that licensed lessor-retailers may exclude specified fees and dealer documentary preparation charges from the advertised total price of a vehicle. The amount of the dealer documentary preparation charge which may be excluded is \$25.

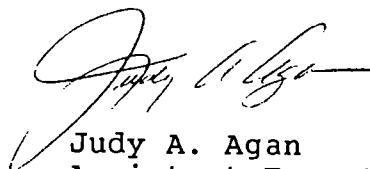
The act also amends Section 11713.1 of the Vehicle Code to increase from \$20 to \$25 the amount of dealer documentary charges which may be excluded from the advertised total price of a vehicle.

Although the documentary preparation charges may be excluded from the advertised total price of a vehicle, these charges are taxable as part of the selling price of the vehicle.

Effective date: January 1, 1988

SUNSET PROVISIONS - WATERCRAFT EXEMPTION

The local tax and transit tax exemptions for property sold to or purchased by operators of waterborne vessels to be used directly and exclusively in the carriage of persons or property will expire January 1, 1988. The sections which establish this exemption (Sections 7202 and 7203-partial exemption from local sales and use tax, Sections 7202.5 and 7202.6-exemption from redevelopment agency sales and use tax, and Sections 7261 and 7262-exemption from transactions and use tax) are automatically repealed as of January 1, 1988. A new version of each section, which does not include the watercraft exemption, will become operative as of that date.



Judy A. Agan
Assistant Executive Secretary
Business Taxes





STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

(916) 445-3956

July 14, 1988

Honorable Sally Tanner
Assemblywoman, 60th District
State Capitol, Room 4146
Sacramento, CA 95814

Dear Assemblywoman Tanner:

In accordance with the requirements of Government Code Section 11017.5, following is a report of action taken by the State Board of Equalization to implement Assembly Bill 2057 (1987) Chapter 1280, effective January 1, 1988.

I. Purpose:

Among other provisions, this act requires the Board to 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 Section 1793.2 of the Civil Code (commonly known as the California "Lemon Law"). Prior to the effective date of the act, the Board was not authorized to make a refund to the manufacturer, since the retailer had paid the sales tax to the Board, and the transaction between the manufacturer and the buyer did not nullify the retailer's sale.

II. Action Taken By the Board:

A. Information to Affected Taxpayers

1. A notice was mailed in January 1988 to manufacturers and distributors of motor vehicles, explaining the provisions of the act.
2. The Board's pamphlet, "Tax Tips for Motor Vehicle Dealers (New and Used)" is currently being revised to reflect the act's provisions.

LEGISLATIVE INTENT SERVICE (800) 666-1917



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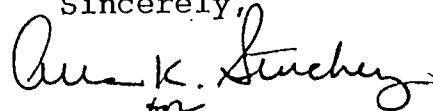
- 3. A brief summary of this statute was included in the Board's "Tax Information" Bulletin issued in December 1987, and mailed to all taxpayers registered with the Board, as an attachment to the blank form of the quarterly, yearly, or monthly tax returns.

B. Information to Board Staff

- 1. The Board's "Tax Information" Bulletin issued in December 1987 was also furnished to Board staff.
- 2. A memo was sent by the Principal Tax Auditor to District Administrators, explaining the amendments made by the act.
- 3. Operations Memo No. 907, which explains the administrative procedures related to reimbursement to a manufacturer of an amount equal to the sales tax, was distributed to the staff on January 8, 1988.
- 4. Operations Memo No. 900 was prepared and issued on November 18, 1987, summarizing the new legislation enacted during the 1987 Legislative Session; it included a brief summary of the provisions of this act.

Copies of the information provided to taxpayers and the Board staff are attached.

Sincerely,



for
Cindy Rambo
Executive Director

CR:kc

Attachment

cc: Assembly Governmental Efficiency Committee
 Assembly Ways and Means Committee
~~Senate Judiciary Committee~~
~~Senate Appropriations Committee~~
 Committee

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STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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Third District, San Diego

PAUL CARPENTE
Fourth District, Los Angele

GRAY DAVI
Controller, Sacramento

DOUGLAS D. BEL
Executive Secretary

NOTICE TO MOTOR VEHICLE MANUFACTURERS AND DISTRIBUTORS

MANUFACTURERS MAY NOW RECEIVE
REIMBURSEMENT FOR CALIFORNIA SALES TAX
REFUNDED TO BUYERS OF DEFECTIVE VEHICLES

Assembly Bill 2057 (Chapter 1280, Statutes of 1987) amends Sections 1793.2, 1794, and adds Section 1793.25 to the Civil Code, effective January 1, 1988. These sections are commonly known as the California "Lemon Law".

The Lemon Law provides an arbitration process to resolve disputes between manufacturers and consumers of new cars which are purported to have major manufacturing defects. This law stipulates that if an arbitrator's judgment is in favor of the buyer, the manufacturer must replace the vehicle or make restitution. In the case of replacement, the new vehicle is considered a replacement under warranty and the tax liability is measured only by the amount the customer pays in excess of the credit received. In the case of restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including applicable sales tax. Previously, manufacturers were not entitled to reimbursement for the amount of California sales tax refunded to buyers.

Effective January 1, 1988, the State Board of Equalization is authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which the manufacturer includes in making restitution to the buyer. For purposes of this law a "new motor vehicle" means a motor vehicle bought for personal, family, or household use; but does not include a motorcycle, motorhome or commercial vehicle over 10,000 pounds. Satisfactory proof must be provided that the retailer of the motor vehicle reported and paid the sales tax on the original sale of the motor vehicle.

When making restitution, the manufacturer may deduct an amount for the buyer's usage of the defective vehicle and any amount charged for nonmanufacturer items installed by the dealer. These amounts, as well as amounts exempt from tax in the original sale must be deducted from the original vehicle selling price before calculating the sales tax refund.

Claims for reimbursement of sales tax refunded to buyers under the Lemon Law should be directed to the California State Board of Equalization, Audit Review and Refund Unit, P.O. Box 942879, Sacramento, CA 94279-0001.

A list of Board of Equalization offices and their telephone numbers is included on the reverse side of this notice. If you have any questions about this newly-enacted legislation please contact them.

STATE BOARD OF EQUALIZATION

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LEGISLATIVE INTENT SERVICE (800) 666-1917



TOOLS AND EQUIPMENT

When tools and equipment are purchased for use in your business they should not be purchased ex-tax for resale. If these items are purchased from automotive supply houses who also sell you repair parts for resale, you should make it clear to your supplier that the tools and equipment are not purchased for resale.

WARRANTIES

PARTS USED FOR WARRANTY SERVICE

If you furnish repair parts under a mandatory factory warranty, the parts so furnished are considered to have been included in the original selling price of the vehicle. In this case there is no further tax liability because of the use of the parts.

When you furnish repair parts under an optional warranty, i.e., a warranty the customer purchased for an extra charge without being required to do so, tax applies to the cost of the parts you use to make repairs which are required under the warranty. These parts should be reported as self consumed merchandise. Tax also applies to any amount the customer is required to pay under the warranty for the replacement parts furnished. The charge for an optional warranty is not subject to sales or use tax.

TRANSFERS OF WARRANTIES

A transfer of a mandatory warranty after the original sale of the automobile to which it applies is a transfer of the obligation of the manufacturer to provide replacement parts and/or labor pursuant to the warranty to the new owner in the event that such parts and/or labor are needed, and is not a sale of tangible personal property. Warranty transfer fees are therefore not subject to sales tax.

Such a warranty remains in existence and follows the ownership of the automobile until the period of its effectiveness has expired. Parts provided and used after a mandatory warranty has been transferred are considered to have been sold as part of the original sale of the automobile. Since the warranty applies to the automobile itself, the furnishing of parts pursuant to the warranty, either to the purchaser/owner or to subsequent owners, is not subject to sales tax.

CALIFORNIA LEMON LAW

Civil Code Section 1793.2 incorporates legislation commonly known as the "California Lemon Law." The law provides an arbitration process to resolve disputes between manufacturers and consumers of new cars which are reported to have major manufacturing defects. If the mediators rule in favor of the customer, the manufacturer is required by law either to replace the automobile or to reimburse the purchase price with a possible reduction for an amount attributable to use prior to discovery of the defect, and any amount charged for nonmanufacturer items installed by the dealer.

The customer's rights under the "California Lemon Law" are ~~only~~ against the manufacturer ~~only~~ and not the dealer.
AGAINST

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~~motor vehicle reported and paid the tax on the original sale of the motor vehicle.~~

~~In the case of a replacement...~~



TAX INFORMATION

QUARTERLY ISSUE
DECEMBER 1987

California State Board of Equalization



MEMBERS OF THE BOARD

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
State Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

*Published by the
California State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0001*

FEATURED ARTICLES

1. Summary of New Legislation
2. Proposed Tax Regulation Action
3. Amendments to the Prepayment Requirements for Sales Tax on Distributions of Motor Vehicle Fuel
4. Partial Local and Transit Sales and Use Tax Exemption Expires for Operators of Waterborne Vessels and Aircraft Common Carriers
5. Whole Dollar Reporting Now in Effect
6. Do You Sell Gasoline? If So, Have You Been Properly Claiming Your Prepayment Credit on Your Sales and Use Tax Return?
7. Retailers of Certain Vehicles, Aircraft, and Vessels Must Collect Transactions Use Tax
8. Recycling Fees Are Not "Deposits" for Purposes of the Sales and Use Tax
9. U.S. Government Bankcard Transactions Are Exempt from Sales and Use Tax
10. New Federal Excise Taxes May Be Subject to Sales Tax
11. Items Purchased with Federal Food Stamps Are Exempt From Sales Tax
12. Clarification of Printed Sales Message Exemption
13. Incorrect Written Sales and Use Tax Advice May Relieve Taxpayer's Obligation
14. Summary of 1987 Tax Information Articles
15. Privacy Notice: Information Furnished the Board of Equalization Is Held Confidential
16. New Reference Material



1. SUMMARY OF NEW LEGISLATION

Here is a summary of changes in the Sales and Use Tax Law, Transactions and Use Tax Law, Motor Vehicle Fuel License Tax Law, Use Fuel Tax Law, Cigarette Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, and the California Universal Telephone Service Act, which were enacted in 1987. The changes are effective January 1, 1988 unless otherwise indicated.

DIESEL FUEL IS EXEMPT FROM SALES AND USE TAX WHEN IT IS USED IN CERTAIN COMMERCIAL WATERCRAFT OPERATIONS—Assembly Bill 57 (Felando and Hauser), Chapter 1352, Statutes of 1987, exempts from sales and use tax the sale and use of diesel fuel which is used in operating watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in these operations outside the territorial waters of this state. This exemption will be in effect only during the calendar year 1988.

BIOMECHANICAL FOOT ORTHOSES ARE EXEMPT FROM THE SALES AND USE TAX—Assembly Bill 99 (Johnson), Chapter 384, Statutes of 1987, effective September 3, 1987, exempts from sales and use tax the sale or use of custom-made biomechanical foot orthoses.

SALES AND USE TAX PREPAYMENT REQUIREMENTS MAY BE AMENDED—Assembly Bill 229 (Leonard), Chapter 1144, Statutes of 1987, may raise the minimum amount taxable sales for which a retailer is required to prepay his or her tax liability from \$17,000 or more per month to \$50,000 or more per month. This amendment to the prepayment requirements will become operative only if it is certified by the Attorney General that the revisions to the definition of "retailer engaged in business in this state" (as described in the discussion of Assembly Bill 677 below) are legally enforceable under the United States Constitution, as determined by a final decision of the courts, and certification by the Department of Finance that revenues from such revisions are being remitted to the State Board of Equalization.

THE EXEMPTION FROM SALES AND USE TAX FOR SALES OF COMMEMORATIVE "CALIFORNIA GOLD" MEDALLIONS IS PERMANENT—Assembly Bill 257 (Kelley), Chapter 1095, Statutes of 1987, makes permanent the sales and use tax exemption provided for "California Gold" medallions produced and sold pursuant to Chapter 25 (commencing with Section 7551) of Division 7 of Title 1 of the Government Code.

(Continued On Page 2)

For further information about these articles, contact any Board of Equalization office listed in your telephone directory white pages under "California, State of — Board of Equalization". Requests for advice regarding a particular activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

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LEGISLATIVE SERVICE (800) 666-1917

THE PERIOD DURING WHICH THE BOARD MAY FILE A JUDGMENT AGAINST A TAX DEBTOR HAS BEEN EXTENDED—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, extends from three to ten years (from the date the amount was due) the period during which the Board may file a certificate in any county requesting that judgment be entered against a debtor.

CORPORATE OFFICERS CAN BE HELD PERSONALLY LIABLE FOR USE TAX—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, provides that personal liability may be imposed on corporate officers if the corporation has included use tax on the billing to the customer and has collected the use tax, or has issued a receipt for the use tax, and has failed to report and pay the use tax.

CLASS CLAIMS FOR REFUND OF SALES AND USE TAX MUST BE ACCOMPANIED BY WRITTEN AUTHORIZATION—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, requires that a claim for refund filed on behalf of a class of taxpayers must be accompanied by written authorization from each taxpayer, sought to be included in the class, or the authorized representative.

PENALTY FOR FAILURE TO MAKE A TIMELY PREPAYMENT OF GASOLINE TAX MAY BE WAIVED—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, provides that the penalty for failure to make a timely prepayment of gasoline tax may be waived if the Board finds that a person's failure to make the timely prepayment is due to reasonable cause and circumstances beyond the person's control and occurred with the exercise of ordinary care and without willful neglect.

ANNUAL FLAT RATE USE FUEL TAX WILL BE ASSESSED FOR THE YEAR FOLLOWING THE DATE THE FLAT RATE TAX IS PAID—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, requires the Board to use annual periods, not calendar years, to apply the annual flat rate use fuel tax. The tax applies for the annual period from the end of the month in which the tax is paid.

EMERGENCY TELEPHONE USERS SURCHARGE ACT: SERVICE SUPPLIERS MUST MAINTAIN RECORDS FOR FOUR YEARS—Assembly Bill 293 (Cortese), Chapter 38, Statutes of 1987, requires service suppliers to maintain records for four years, which may be necessary to determine the amount of surcharge collected.

THE DEFINITION OF "SERVICE SUPPLIER," FOR EMERGENCY TELEPHONE USERS SURCHARGE, IS AMENDED—Assembly Bill 320 (Moore), Chapter 556, Statutes of 1987, effective January 1, 1988 and thereafter, amended the definition of "service supplier" to include any person supplying intrastate telephone communications services for whom the Public Utilities Commission modifies or eliminates the requirement to prepare and file intrastate tariffs.

THE CALIFORNIA UNIVERSAL TELEPHONE SERVICE ACT IS REPEALED—Assembly Bill 386 (Moore), Chapter 163, Statutes of 1987, effective July 16, 1987, repealed the California Universal Telephone Service Act, which was administered by the Board of Equalization. The Universal Lifeline Telephone Service Program will continue in effect, but the program will be administered by the Public Utilities Commission.

EXEMPTION FROM SALES TAX FOR MEALS IN ALCOHOL RECOVERY FACILITIES CLARIFIED—Assembly Bill 538 (Seastrand), Chapter 278, Statutes of 1987, clarifies that meals and food products served to and consumed by residents or patients of an alcoholism recovery facility are exempt from the sales and use tax. These transactions were exempt prior to January 1, 1985, when a change in the Health and Safety Code section related to the licensing of these facilities technically repealed the exemption. For this reason, the provisions of Assembly Bill 538 are retroactive to January 1, 1985.

MORE OUT-OF-STATE RETAILERS ARE REQUIRED TO COLLECT AND REMIT THE USE TAX ON SALES MADE IN CALIFORNIA—Assembly Bill 677 (Moore), Chapter 1145, Statutes of 1987, amends the definition of "retailer engaged in business in this state" to include several types of out-of-state retailers who are not currently required to collect and remit California use tax. Affected retailers include those who solicit orders by a telecommunication or television shopping system and those who solicit orders by mail under specified circumstances.

PRODUCTS WHICH ARE GENERALLY TAXABLE ARE EXEMPT WHEN PURCHASED WITH FOOD STAMPS—Assembly Bill 1087 (Polanco), Chapter 1103, Statutes of 1987, effective October 1, 1987, exempts from sales and use tax the sale or use of all property purchased with food stamps. Consequently, some items that are otherwise taxable are exempt when purchased with food stamps. Examples of affected transactions are sales of nonalcoholic carbonated beverages, distilled water (in containers less than one-half gallon), food coloring, and ice.

INTENT TO DEFEAT OR EVADE THE DETERMINATION OF TAX LIABILITY MAY BE A FELONY—Assembly Bill 1555 (McClintock), Chapter 1064, Statutes of 1987, makes it a felony for any person to intend to defeat or evade the determination of tax liability of \$25,000 or more in any 12-month period. The felony provisions are applicable to the following tax programs: the Sales and Use Tax Law, the Use Fuel Tax Law, the Cigarette Tax Law, the Energy Resources Surcharge Law, and the Emergency Telephone Users Surcharge Law.

"LEMON LAW"—MANUFACTURERS MAY BE REIMBURSED FOR SALES TAX RETURNED TO THE PURCHASER OF A NEW MOTOR VEHICLE—Assembly Bill 2057 (Tanner), Chapter 1280, Statutes of 1987, requires the Board to reimburse the manufacturer of a new motor vehicle for the sales tax the manufacturer returned to the buyer, if the manufacturer presents documentation that the retailer paid the sales tax to the state.



RETAILERS OF CERTAIN VEHICLES, VESSELS, AND AIRCRAFT NOT LOCATED IN TRANSIT DISTRICTS ARE REQUIRED TO COLLECT TRANSACTIONS (SALES) AND USE TAX—Assembly Bill 2446 (Eastin), Chapter 308, Statutes of 1987, requires all retailers of registered vehicles, licensed aircraft, and undocumented vessels to collect and remit transactions use tax when the purchaser registers or licenses the vehicle, aircraft, or vessel at an address in a transit district which imposes such a tax. Information concerning the cities and counties located within these transit districts (and the tax rates applicable in those districts) is available at your local Board of Equalization office.

LEASES OF ANIMATED MOTION PICTURES ARE EXEMPT FROM SALES AND USE TAX—Assembly Bill 2609 (Condit and Nolan), Chapter 915, Statutes of 1987, effective September 21, 1987, clarifies that leases of animated motion pictures are exempt from sales and use tax. The act also expresses the intent of the Legislature that the Board, in promulgating regulations, determine that certain charges for animation, as used in the production of animated motion pictures, are not taxable.

SALES OF FOOD THROUGH VENDING MACHINES ARE PARTIALLY EXEMPT FROM SALES TAX—Senate Bill 121 (Maddy), Chapter 1300, Statutes of 1987, partially exempts from sales tax the sale of food products (other than hot prepared food products) when sold through a vending machine for more than \$0.15. The percentage of gross receipts which is exempt from tax is 23% during the year 1988, 45% during the year 1989, and 67% thereafter.

UNDER THE SALES AND USE TAX LAW, THE OPERATOR OF A BULK VENDING MACHINE IS THE CONSUMER OF CERTAIN FOOD PRODUCTS SOLD FOR \$0.25 OR LESS—Senate Bill 121 (Maddy), Chapter 1300, Statutes of 1987, provides that any vending machine operator is a consumer, rather than a retailer, of unsorted food products (other than beverages or hot prepared food products) sold through a vending machine which dispenses food products at random, without selection by the customer.

SALES OF AVIATION GASOLINE ARE EXEMPT FROM THE PREPAYMENT REQUIREMENTS FOR MOTOR VEHICLE FUEL—Senate Bill 190 (Craven), Chapter 210, Statutes of 1987, effective July 23, 1987, provides that distributors and brokers are not required to collect prepayments of the sales and use tax on transfers of aviation gasoline for use in propelling aircraft.

THE BOARD MAY READJUST THE RATE OF PREPAYMENT OF RETAIL SALES TAX BY DISTRIBUTORS AND BROKERS OF MOTOR VEHICLE FUEL—Senate Bill 190 (Craven), Chapter 210, Statutes of 1987, effective July 23, 1987, provides that, in the event the price of fuel decreases or increases after April 1 of each year, the Board may readjust the prepayment rate to avoid prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability.

DISTRIBUTORS AND BROKERS MAY CLAIM A REFUND FOR UNCOLLECTIBLE PREPAYMENTS OF RETAILERS' SALES TAX ON SALES OF MOTOR VEHICLE FUEL—Senate Bill 190 (Craven), Chapter 210, Statutes of 1987, effective July 23, 1987, provides that a refund may be granted to any person who is unable to collect the prepayment of sales tax on transfers of motor vehicle fuel insofar as the sales of the fuel are represented by accounts which have been found to be worthless and have been charged off for income tax purposes.

UNDER THE SALES AND USE TAX LAW, NONPROFIT PARENT COOPERATIVE NURSERY SCHOOLS MAY BE CONSUMERS OF TANGIBLE PERSONAL PROPERTY THEY SELL—Senate Bill 312 (McCorquodale), Chapter 1213, Statutes of 1987, provides that a nonprofit parent cooperative nursery school is a consumer, not a retailer, of tangible personal property it sells, if the profits are used exclusively in furtherance of the purposes of the organization.

THE PORTION OF A USED VEHICLE WHICH HAS BEEN MODIFIED FOR PHYSICALLY DISABLED PERSONS MAY BE EXEMPT FROM SALES TAX—Senate Bill 522 (Russell), Chapter 1471, Statutes of 1987, exempts from sales and use tax the gross receipts from the sale, and the use, of items used to modify a vehicle for the physically disabled. The exemption is applicable only if the modified vehicle is sold to a disabled person who is eligible to be issued a distinguishing license plate or placard for parking purposes pursuant to Section 22511.5 of the Vehicle Code.

ART PURCHASED BY STATE OR LOCAL GOVERNMENTS MAY BE EXEMPT FROM SALES AND USE TAX—Senate Bill 597 (Mello), Chapter 1266, Statutes of 1987, exempts from sales and use tax the sale or use of original works of art purchased by state or local governments for display in public places. The act also exempts from sales or use tax the sale or use of tangible personal property purchased by state or local governments, for display to the public, which has value as a museum piece and is used exclusively for display purposes, to the same extent that such property is exempt when sold to a nonprofit museum.

VEHICLE DEALERS AND LESSOR-RETAILERS — THE LAWS RELATED TO ADVERTISED PRICE OF VEHICLES HAVE BEEN CHANGED—Senate Bill 1573 (Campbell), Chapter 503, Statutes of 1987, increases from \$20 to \$25 the dealer documentary preparation charge which may be excluded from the advertised total price of a vehicle. The act also excludes certain taxes and fees and up to \$25 in documentary preparation charges from advertisements and sales by licensed lessor-retailers. Although the documentary preparation charges may be excluded from the advertised total price of a vehicle, these charges are taxable as part of the selling price of the vehicle.

THE ADJUSTMENT FORMULA FOR HAZARDOUS WASTE DISPOSAL FEES, THE CRITERIA FOR SURFACE IMPOUNDMENTS, AND THE CURRENT FACILITY FEES ARE IN EFFECT UNTIL JULY 1, 1988—Assembly Bill 1308 (Wright), Chapter 1417, Statutes of 1987, extends the termination date for the adjustment formula for disposal fees, the impoundment criteria, and the facility fees from April 1, 1988 until July 1, 1988.



HAZARDOUS WASTES GENERATED OR DISPOSED OF BY CERTAIN ENTITIES ARE EXEMPT FROM THE DISPOSAL FEE—Assembly Bill 1308 (Wright), Chapter 1417, Statutes of 1987, exempts from the disposal fee hazardous wastes generated or disposed of by 1) state and local agencies operating a household hazardous waste collection program, 2) by local vector control agencies or 3) county agricultural commissioners meeting specified requirements.

“FACILITY” HAS BEEN REDEFINED—Assembly Bill 1308 (Wright), Chapter 1417, Statutes of 1987, redefines “facility” subject to the facility fee to exclude any facility operated by a local government agency which is used for hazardous waste generated or disposed of by local vector control agencies or by county agricultural commissioners meeting specified requirements.

CERTAIN SHREDDER WASTE IS EXEMPT FROM SPECIFIED HAZARDOUS WASTE DISPOSAL FEES AND TAXES—Assembly Bill 1542 (Bradley), Chapter 1483, Statutes of 1987, exempts from the hazardous waste fee or tax, until January 1, 1989, shredder waste disposed of pursuant to Section 25143.8 of the Health and Safety Code. That section provides that the Department of Health Services shall not prohibit any person from disposing of shredder waste in an appropriate Class III landfill designated by a California regional water quality control, if the department determines that the waste will not pose a threat to human health or water quality, the waste is disposed of within 45 days after production or determination of its hazardous constituents, and the producer of the waste complies with the following requirements:

1. The producer carries out an ongoing shredder waste testing program as specifically described in the act,
2. The producer, on or before February 15, 1988, takes a representative sample of shredder waste which has been stored, but not disposed of, as of January 1, 1988, in accordance with the sampling methodology and sample handling procedures described in the act, and
3. The producer maintains records documenting the use of a registered hauler and a weigh bill, bill of lading, or similar papers indicating specific information as described in the act.

The act defines “shredder waste” as waste which results from the shredding of automobile bodies, household appliances, and sheet metal. The act specifically provides that its provisions do not apply to any shredder waste which contains total concentrations of polychlorinated biphenyls in excess of 50 parts per million.

THE DISPOSAL OF SOLID WASTE IS SUBJECT TO A FEE—Assembly Bill 2448 (Eastin), Chapter 1319, Statutes of 1987, effective September 28, 1987, provides that every operator of a solid waste landfill required to have a solid waste facilities permit shall pay an annual fee to the Board of Equalization on all solid waste disposed of at each disposal site on and after January 1, 1989. The act states that each feepayer, on or before March 1 of each year, shall report to the Board the amount of waste disposed at each site during the preceding calendar year. The Board will use the reported amounts to compute the fees which will result in the collection of \$20 million each year. The Board will notify each feepayer of the amount due. The fee must be paid on or before July 1 of each year.

2. PROPOSED TAX REGULATION ACTION

Following is a list of regulations which are currently being revised to implement, interpret, or make specific recent legislation which amended provisions of the Revenue and Taxation Code, or to reflect recent court decisions. The current regulations may not incorporate all of the recent amendments to the law. Whenever the statute and regulation do not agree, statutory law prevails.

- Sales and Use Tax Regulation 1502 — Automatic Data Processing Services and Equipment
- Sales and Use Tax Regulation 1529 — Motion Pictures
- Sales and Use Tax Regulation 1587 — Animal Life and Feed
- Sales and Use Tax Regulation 1589 — Containers and Labels
- Sales and Use Tax Regulation 1593 — Aircraft
- Sales and Use Tax Regulation 1594 — Watercraft
- Sales and Use Tax Regulation 1702 — Successor's Liability
- Sales and Use Tax Regulation 1703 — Interest and Penalties
- Use Fuel Tax Regulation 1323 — Passenger Carriers — Transit Partial Exemption

In addition, the following new regulations are being written to implement, interpret, or make specific recent legislation which amended provisions of the Revenue and Taxation Code.

- Sales and Use Tax Regulation 1541.5 — Printed Sales Messages
- Sales and Use Tax Regulation 1699.5 — Direct Payment Permits

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For more information concerning regulations for which revisions are pending, contact your local Board of Equalization office.

LEGISLATIVE INTENT SERVICE (800) 666-1917



**LEGAL
ANALYSIS OF CALIFORNIA
ASSEMBLY BILL 2057**

Prepared by
McCUTCHEM, BLACK, VERLEGER & SHEA
Los Angeles, California

June 30, 1987

LEGISLATIVE INTENT SERVICE (800) 666-1917



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I. INTRODUCTION

Pending Assembly Bill 2057 is unconstitutional because it violates a number of basic rights. Perhaps foremost, A.B. 2057 violates the right to jury trial: it compels automobile manufacturers either to forego their right to trial by jury in warranty disputes, or to be penalized if they stand on their right and choose not to establish arbitration mechanisms to resolve warranty disputes. In providing that manufacturers "may" establish such systems, but that the failure to do so will result in stiff civil penalties, A.B. 2057 is a transparent attempt to indirectly make manufacturers do that which they cannot be directly compelled to do. This is impermissible, because the constitution prohibits laws purporting to compel the waiver of the right to jury trial, and those purporting to penalize the exercise of a constitutional right.

As amended on May 13, 1987, A.B. 2057 provides that a manufacturer may establish a non-judicial dispute resolution process for warranty claims that is binding only on the manufacturer; requires the state Bureau of Automotive Repair to certify the process and to periodically inspect and audit it; and subjects manufacturers (1) to license revocation if they do not comply with decisions of the non-judicial dispute resolution process and (2) to civil penalties if they do not establish the process or if the process willfully fails to comply with the statutory requirements. (A.B. 2057 at 3-6, 17 (attached).)

The most important of these statutory requirements is that the process must be empowered to "[r]ender decisions which are binding on the manufacturer if the buyer elects to accept the decision." Failure to establish such a process gives rise to civil penalties (Proposed amendment to Civil Code § 1793.2(e)(3)(B) and § 1794(e); A.B. 2057 at 13 and 17). In an action for damages for breach of warranty, a prevailing consumer automatically recovers treble damages and attorney's fees for the manufacturer's failure to have maintained a binding non-judicial process:

"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 attorneys fees and costs if the manufacturer fails to rebut the presumption [of non-conforming goods in] Section 1793.2, and either (1) the manufacturer does not maintain a third party dispute resolution process which complies with subdivision (e) of Section 1793.2, or (2) the manufacturer's qualified third party



dispute resolution process willfully fails to comply with subdivision (e) of Section 1793.2 in the buyer's case."

(Emphasis added.)

This section imposes a penalty of double the compensatory damages *and* double the attorney's fees; a prior section of A.B. 2057 already awards attorney's fees and costs to a prevailing consumer. (Proposed amendment to Civil Code § 1794(d); A.B. 2057 at 16.) Another prior section, already law, also allows for *discretionary* civil penalties for a manufacturer's willful failure to comply with any provision of the Song-Beverly Act. (Cal.Civ.Code § 1794(c).)

A.B. 2057 is invalid legislation for each of the following reasons:

1. A.B. 2057 infringes on the right to jury trial because it (1) compels a party to participate in binding arbitration without also affording that party the right to *de novo* trial; and (2) imposes a civil penalty on the exercise of the right to jury trial.

2. A.B. 2057 contravenes the due process clause and the doctrine of separation of powers, because it impermissibly delegates judicial authority to a non-judicial body.

3. A.B. 2057 violates the Supremacy Clause of the U.S. Constitution because it imposes a dispute resolution system whose features are contrary to the policy judgments expressed under the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*

4. A.B. 2057 deprives manufacturers of equal protection of the laws because it affords consumers the fundamental right of access to the courts, but denies manufacturers that same access.

5. A.B. 2057 also is unlawful because it: a) permits the decision of an arbitrator to be admitted into evidence in a subsequent civil action even though California law precludes cross-examination of an arbitrator on the basis of his decision; b) in contravention of public policy allows civil penalties to be imposed vicariously if the arbitration process, not the manufacturer, willfully fails to comply with the statute; and c) imposes a double penalty for the same offense.



II. A.B. 2057 IS UNCONSTITUTIONAL BECAUSE IT INFRINGES ON THE RIGHT TO JURY TRIAL GUARANTEED BY THE CALIFORNIA CONSTITUTION

A. A MANUFACTURER HAS A CONSTITUTIONAL RIGHT TO JURY TRIAL UNDER CALIFORNIA LAW FOR A CLAIM FOR BREACH OF WARRANTY

In denying manufacturers a jury trial in warranty disputes, A.B. 2057 violates the state constitution's guarantee of a right to jury trial. As summarized by the California Supreme Court in *C&K Engineering Contractors v. Amber Steel Co., Inc.*, 23 Cal.3d 1, 151 Cal.Rptr. 323, 587 P.2d 1136 (1978):

"The right to a jury trial is guaranteed by our Constitution. (Cal.Const., Art. I, § 16.) We have long acknowledged that the right so guaranteed, however, is the right as it existed at common law in 1850, when the Constitution was first adopted, and what that right is, is a purely historical question, a fact which is to be ascertained like any other social, political or legal fact'."

23 Cal.3d at 8 (citation omitted).

Equally well settled is the principle that at common law the jury trial right existed only for actions "at law" and not for actions "in equity". *Id.* at 8. In determining whether an action is "at law" or "in equity" the courts look to the "gist" of the action:

"As we stated in *People v. One 1941 Chevrolet Coupe, supra*, 37 Cal.2d 283, 'If the action has to deal with ordinary common-law rights cognizable in courts at law, it is to that extent an action of law. In determining whether the action was one triable by a jury at common law, the court is not bound by the form of the action but rather by the nature of the rights involved and the facts of the particular case -- the *gist* of the action. A jury trial must be granted where the *gist* of the action is legal, where the action is in reality cognizable at law'."

23 Cal.3d at 9. (Emphasis in original.)



The "gist" of a claim against an automobile manufacturer for breach of warranty is breach of contract. See *Keith v. Buchanan*, 173 Cal.App.3d 13, 19, 220 Cal.Rptr. 392 (1985). A "warranty is a contractual term concerning some aspect of [a] sale" 2 *Witkin*, Summ.Cal.Law (8th ed. 1973), Sales § 48, 1128. An express warranty is a contractual promise (*Keith, supra*, at 19-20; *Stott v. Johnston*, 36 Cal.2d 864, 866, 229 P.2d 348 (1951)), while an implied warranty is a contract term that arises by operation of law (*Keith, supra*, at 24-25; *Holmes Packaging Machinery Corp. v. Bingham*, 252 Cal.App.2d 862, 60 Cal.Rptr. 769 (1967)).

Under California law a claim for damages based on breach of contract undeniably is one for which there is a right to jury trial. *C & K Engineering, supra*, 23 Cal.3d at 9; *Raedke v. Gibraltar Savings and Loan Association*, 10 Cal.3d 665, 671, 111 Cal.Rptr. 693, 517 P.2d 1157 (1974); *Abbott v. City of Los Angeles*, 50 Cal.2d 438, 462, 326 P.2d 484 (1958). There are reported cases as early as 1885 in which juries have tried claims for breach of warranty under contract principles. See *Hoult v. Baldwin*, 67 Cal. 610, 8 P. 440 (1885); *Greenleaf v. Stockton Combined Harvester & Agricultural Works*, 78 Cal. 606, 21 P. 369 (1889). Claims for breach of express or implied warranty continue to be tried by juries in recent times. *Fluor Corp. v. Jeppeson & Co.*, 170 Cal.App.3d 468, 216 Cal.Rptr. 68 (1985); *Putensen v. Clay Adams, Inc.*, 12 Cal.App.3d 1062, 91 Cal.Rptr. 319 (1970). Indeed, the issues relevant for determination in a breach of warranty case have been set forth in standard jury instructions prepared by the Committee on Standard Jury Instructions. See Bar Association Jury Instructions ("BAJI") Nos. 9.40-9.90.

Furthermore, it is apparent from the damage measures in the existing statute that the claims arising thereunder are those for which a jury is available. Civil Code § 1794 expressly provides for damages based on (1) the "revocation of goods" measure under Cal. Comm. Code §§ 2711 *et seq.* and (2) the "cost of repairs" measure under Cal. Com. Code §§ 2714 *et seq.* (Civ. Code § 1794 (a) (1) and (2).) These remedies are traditional breach of contract damages for which jury trials are available. Moreover, A.B. 2057 expressly refers to the buyer's remedy for breach of warranty as "restitution" or "replacement." (Civil Code § 1793.2(d)(2); A.B. 2057 at 10.) Restitution is a recognized form of legal action for which there is a right to jury trial. *Paularena v. Superior Court*, 231 Cal.App.2d 906, 914, 42 Cal.Rptr. 356 (1965). While "replacement" is analogous to the equitable remedy of specific performance, under the statute the manufacturer has the election of whether to provide restitution or replacement (Civ. Code § 1793.2(d)(2)). Further, the existence of an equitable remedy for a legal claim does not defeat a party's right to jury trial on the legal issues. *Escamilla v. California Insurance Guarantee*



Association, 150 Cal.App.3d 53, 57-58, 197 Cal.Rptr. 463 (1983); 3 *Witkin*, Cal.Proc. (3d ed. 1985), *Actions*, § 94, p. 120.

There are no cases that have challenged the right to jury trial for a breach of a warranty claim. In the one reported decision where a consumer went to trial for an obligation arising under § 1794 of the Civil Code, a jury trial was had. See *Troensegaard v. Silvercrest Industries, Inc.*, 175 Cal.App.3d 218, 220 Cal.Rptr. 712 (1985) (action for damages for willful violation of Civil Code § 1794). There is plainly a right to jury trial for an action based on the breach of express or implied warranty.

B. A STATUTE LIKE A.B. 2057 WHICH COMPELS A PARTY TO ARBITRATE A MATTER FOR WHICH THERE IS A RIGHT TO JURY TRIAL, BUT DOES NOT ALSO AFFORD THE RIGHT TO TRIAL DE NOVO, IS UNCONSTITUTIONAL UNDER CALIFORNIA LAW

The United States Supreme Court has unequivocally ruled:

"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."

United Steelworkers of America, AFL-CIO v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960).

This principle has been adopted under California law. In *Wheeler v. St. Joseph Hospital*, 63 Cal.App.3d 345, 133 Cal.Rptr. 775 (1976), the court reversed an order compelling arbitration pursuant to an arbitration clause contained in an adhesion contract because the weaker party's consent was not clearly demonstrated. The court stated:

"[W]e start with the basic premise that arbitration is consensual in nature. The fundamental assumption of arbitration is that *it may be invoked as an alternative to the settlement of disputes through the judicial process solely by reason of an exercise of choice by [all] parties*'."

63 Cal.App.3d at 355. (Citation omitted, emphasis added.)

Accord, Ramirez v. Superior Court, 103 Cal.App.3d 746, 163 Cal.Rptr. 223 (1980) (Legislature cannot constitutionally establish a presumption that a party who has signed an arbitration agreement has in fact waived the right to jury trial).

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Consistent with these principles, 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*. This principle was expressed in *Hebert v. Harn*, 133 Cal.App.3d 465, 184 Cal.Rptr. 83 (1982), which reviewed a California statute that makes arbitration compulsory for claims under \$25,000, but preserves to either party the right of trial *de novo*. In *Hebert*, the court invalidated a local court rule that denied a trial *de novo* to a party who did not file a motion for trial after the arbitration hearing. In so doing, the court observed that the constitutionality of the statute depended on the existence of the *de novo* jury trial right:

"In enacting judicial arbitration as an alternative to the traditional method of dispute resolution, *the Legislature, aware of the constitutional mandate of the right to jury trial, unconditionally provided any party could . . . elect [trial de novo] upon making a request within twenty days of the award.*"

133 Cal.App.3d at 469. (Emphasis added.)

See also, Lyons v. Wickhorst, 42 Cal.3d 911, 915, 231 Cal.Rptr. 738, 727 P.2d 1019 (1986) (lower court erred in dismissing action of party who did not participate in compulsory arbitration).

Hebert cited with approval *In Re Smith*, 381 Pa. 223, 112 A.2d 625, *appeal dismissed*, 350 U.S. 858 (1955), where Pennsylvania's compulsory arbitration system was similarly upheld only because of its provision for *de novo* jury trial. *Id.* at 230. Subsequently, in *Blanton v. Womancare, Inc.*, 38 Cal.3d 396, 212 Cal.Rptr. 151, 696 P.2d 645 (1985), the California Supreme Court emphasized that "[o]ppportunity for *de novo* trial" is the chief feature which distinguishes the compulsory arbitration program from "private arbitration conducted pursuant to the agreement of the parties. . . ." *Id.* at 401. Through these decisions, California has aligned itself with courts in other states which have held that the right to a *de novo* jury trial is necessary to make a compulsory arbitration program constitutional. *See Eastin v. Broomfield*, 116 Ariz. 576, 570 P.2d 744 (1977); *Grace v. Howlett*, 51 Ill.2d 478, 283 N.E.2d 474 (1972); *Attorney General v. Johnson*, 282 Md. 274, 385 A.2d 57, *appeal*



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dismissed, 439 U.S. 805 (1978); *Prendergast v. Nelson*, 199 Neb. 97, 256 N.W.2d 657 (1977); *State ex rel. Strykowski v. Wilkie*, 81 Wis.2d 491, 261 N.W.2d 434 (1978).¹

A.B. 2057 fails under these authorities because it coerces a manufacturer to participate in an arbitration to which there is no right of judicial review, much less a trial *de novo*, if the consumer wishes to bind the manufacturer. The purported choice given to manufacturers to not establish the arbitration process does not save the defect; while A.B. 2057 permits a manufacturer to avail itself of its jury trial right by declining to make available a non-judicial dispute resolution process, the statute punishes a manufacturer who so "elects" by imposing civil penalties in the event the manufacturer does not prevail at trial. Consequently, the statute is also unconstitutional because it impermissibly penalizes the exercise of a constitutional right.

**C. THE CIVIL PENALTIES PROVISION OF A.B. 2057
IS UNCONSTITUTIONAL BECAUSE IT
PENALIZES THE MANUFACTURER FOR
EXERCISING THE CONSTITUTIONAL RIGHT TO
JURY TRIAL**

In California, "[i]t is well settled that to punish a person for exercising a constitutional right is 'a due process violation of the most basic sort.'" *In Re Lewallen*, 23 Cal.3d 274, 278, 152 Cal.Rptr. 528, 590 P.2d 383 (1979). This rule has

¹ Compulsory arbitration statutes that do not provide for trial *de novo* are likewise impermissible under the jury trial guarantee of the Seventh Amendment of the U.S. Constitution. (The Seventh Amendment, however, has not been made applicable to the States. *Crocker v. First Hudson Assocs.*, 583 F.Supp. 21, 22 (D.N.J. 1983).) The Supreme Court invalidated compulsory arbitration statutes in *Dorchy v. Kansas*, 264 U.S. 286 (1924) and *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 262 U.S. 522 (1923). These older decisions were more recently followed in *United Farm Workers v. Babbitt*, 449 F.Supp. 449 (D. Az. 1978), which invalidated an Arizona statute requiring an employer to submit to binding arbitration in order to obtain an injunctive order against his employees to prevent certain strikes. *Babbitt* was reversed and vacated on appeal by the Supreme Court on the grounds that the constitutionality of the arbitration provision had not been contested by the parties, thus making the decision an unnecessary advisory opinion, and because the statute was not necessarily compulsory because it afforded the employer other remedies aside from binding arbitration. 442 U.S. at 304, 305 (1979).



been applied to strike down legislation or judicial action which penalizes the exercise of the right to jury trial. The lead case is *Lewallen*, where the Supreme Court reversed a sentence in a criminal case because the trial court "gave consideration to petitioner's election to plead not guilty in imposing sentence." *Id.* at 279. This sentence effectively penalized the defendant for having availed himself of his jury trial right. Citing several decisions by the U.S. Supreme Court prohibiting punishment for the exercise of the right to jury trial, the Court held that the goal of expediting legal actions did not justify penalizing the exercise of the right to jury trial. 23 Cal.3d at 279.

The principle set forth in *Lewallen* has been consistently followed. In *People v. Justice*, 168 Cal.App.3d Supp. 1, 215 Cal.Rptr. 234 (1985), the court held unconstitutional a local court policy permitting the imposition of a harsher sentence on a defendant who pled not guilty and exercised the right to a jury trial. *Id.* at Supp. 4. ("This practice violates the right to trial by jury.") Similarly, in *In Re Javier A*, 159 Cal.App.3d 913, 973, 206 Cal.Rptr. 386 (1984), the court stated that it is an unconstitutional burden on the right to jury trial to offer a juvenile the option of non-jury trial in a juvenile court or jury trial as an adult in criminal court, since "forcing . . . this election would place an unconstitutional burden on the exercise of [the] right to trial by jury." *Id.* at 973, n.59.²

The aforementioned authorities apply squarely to the civil penalties imposed under A.B. 2057 on the exercise of the jury trial right. In *Hale v. Morgan*, 22 Cal.3d 388, 149 Cal.Rptr. 375, 584 P.2d 512 (1978) the Supreme Court affirmed that civil penalties are penal in nature. 22 Cal.3d at 405. *Accord, Tos v. Mayfair Packing Co.*, 160 Cal.App.3d 67, 79, 206 Cal.Rptr. 459 (1984). The court in *Silvercrest*, *supra*, confirmed that the civil penalties in Civil Code § 1794 are designed to punish, thus serving the same purpose as punitive damages. 175 Cal.App.3d at 226. The imposition of civil penalties to punish the exercise of the right to jury trial is equally as offensive as the punishment found impermissible in *Lewallen* and its progeny.

The punitive nature of A.B. 2057 is not saved by the authorities permitting the legislature to require payment of fees and costs which do not punish a party for exercising his right to jury trial. The distinction between punishment on the one hand, and fees and costs on the other, begins with *U.S. v. Jackson*, 390 U.S. 570

² See also *People v. Black*, 32 Cal.3d 1, 9-10, 184 Cal.Rptr. 454, 648 P.2d 104 (1982) (Constitution forbids pressuring juvenile to forego jury trial rather than take risk that if he turns eighteen years old before sentencing, he may suffer imprisonment).



the rule prohibiting punishment for the exercise of the right to jury trial. The court there struck down a provision of the federal Kidnapping Act which permitted a jury to recommend the death sentence for a convicted defendant, but prohibited such penalty for a defendant who waived the right to jury trial or pled guilty. The court ruled as follows:

"Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights. [Citations omitted.] The question is not whether the chilling effect is 'incidental' rather than 'intentional'; the question is whether that effect is unnecessary and therefore excessive. In this case the answer to that question is clear [T]he goal [of limiting the circumstances under which a death penalty can be imposed] can be achieved without penalizing those defendants who plead not guilty and demand jury trial. . . . Congress cannot impose such a penalty in a manner that needlessly penalizes the assertion of a constitutional right. . . ."

Id. at 582-83.³

Subsequent Supreme Court authorities have made clear that fees or costs are impermissible if they are imposed as a punishment for the exercise of the jury trial right. In *Fuller v. Oregon*, 417 U.S. 40 (1974), the Court upheld the constitutionality of Oregon's recoupment statute under which defendants convicted of criminal offenses could be required to repay the costs of court-appointed counsel. The Court reasoned that this state law involved no "penalty" on the exercise of the jury trial right:

"This case is fundamentally different from our decisions . . . which have invalidated state and federal laws that placed a penalty on the exercise of a constitutional right. [Citations omitted.] Unlike the statutes found invalid in those cases, where the provisions 'had no other purpose or effect than to chill the assertion of constitutional rights by penalizing

³ *People v. Coogler*, 71 Cal.2d 153, 77 Cal.Rptr. 790, 454 P.2d 686 (1969), cert. denied, 406 U.S. 971 (1972) refuted a *Jackson* challenge to California's kidnapping statute, Penal Code § 209, on the ground that, unlike the federal Kidnapping Act, either the jury or the trial court could impose the death sentence on a convicted defendant. *Id.* at 160.



those who choose to exercise them,' . . . Oregon's recoupment statute merely provides that a convicted person who later becomes able to pay for his counsel may be required to do so."

Id. at 54.

The distinction between the impermissible imposition of a penalty and the permissible imposition of costs and fees was addressed by the Ninth Circuit in *U.S. v. Chavez*, 627 F.2d 953 (9th Cir. 1980), *cert. denied*, 450 U.S. 924 (1981). *Chavez* upheld a federal statute that required a taxpayer found guilty of willfully filing a false return to pay the costs of prosecution. The Ninth Circuit rejected a claim that the imposition of such costs was an impermissible infringement on the right to jury trial under *Jackson*, finding the court's analysis in *Fuller* to be more on point:

"It must be emphasized that not every assertion that a statutory scheme has chilled the exercise of a constitutional right results in a finding of unconstitutionality. The Supreme Court, in post-*Jackson* decisions, has not enthusiastically embraced the 'chill' rationale articulated in *Jackson*. In *Fuller v. Oregon*, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974), the Court upheld an Oregon recoupment scheme which required convicted defendants who were indigent at the time of the criminal proceeding against them, but who subsequently acquired the financial means to do so, to repay the costs of their legal defense."

627 F.2d at 956.

The court concluded that the absence of any punishment arising from the imposition of such costs made the statute constitutional:

"A defendant, prosecuted for willful failure to file a tax return, is not subject to a substantial risk of greater punishment because of the existence of the costs of prosecution provision. The provision does serve legitimate governmental purposes. We cannot say with any confidence that the costs of prosecution provision . . . does in fact penalize a defendant's exercise of his constitutional rights The presence of the mandatory costs of prosecution provision does not, with any degree of certainty, substantially increase the threatened punishment. Any encouragement of the waiver of



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constitutional rights that this provision may induce is substantially different from the pressures that undeniably existed in *Jackson*, and cannot be said to be an impermissible burden upon the exercise of constitutional rights."

Id. at 957.

See also Ludwig v. Massachusetts, 427 U.S. 618, 627 (1976) ("Due process is violated only by the *vindictive imposition* of an increased sentence." (Emphasis added.))⁴

Fees and costs can be imposed without impermissibly burdening the jury trial right, but punishment cannot. The civil penalty provision to be added to Civil Code § 1794 is not a cost or fee; it is a punishment. First, it is denominated a penalty. Second, it more than covers costs. Third, as noted, the civil penalty provision already found in Civ. Code § 1794(c) -- permitting recovery of treble damages for any willful violation of the Song-Beverly Act -- has been held to perform the same function as punitive damages: to punish. *Silvercrest, supra*, 175 Cal.App.3d at 226-27. A.B. 2057 would make the same kind of civil penalty (only greater) mandatory in a certain class of cases -- those where the manufacturer insists on his right to jury trial. In short, A.B. 2057 would penalize the exercise of a constitutional right.

Moreover, the cases also provide that punishment in the form of punitive damages cannot be imposed if there has been no injury. Since a manufacturer has a right to jury trial in breach of warranty claims, the fact that he exercises that right cannot create legal injury to a consumer. Yet under proposed Civil Code § 1794(e), civil penalties tantamount to punitive damages would be imposed solely because a manufacturer has exercised the right to jury trial, even though the consumer already has been fully compensated; the civil penalties of § 1794(e) are only available to a consumer who has already prevailed and thus recovered all actual damages, costs and expenses under § 1794(d). This is tantamount to imposing punitive damages without any underlying actual damages, a tack forbidden by law.

⁴ Similarly, *Meyers v. Astoria Convalescent Hospital*, 105 Cal.App.3d 682, 164 Cal.Rptr. 495 (1980), a case involving civil penalties, upheld the constitutionality of a statute that permits a health care facility to pay a civil penalty within four days of receiving a citation rather than contest that citation at trial. The court held that this statute "is no more than a statutory offer of settlement of the citation at the earliest possible time in exchange for the least possible penalty," and was thus permissible. 105 Cal.App.3d at 688.



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