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BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

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May 13, 1983

Representative Walt Furnace, Chairperson  
House Labor and Commerce  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: HB 344

Honorable Representative Furnace:

Thank you for the chance to testify at the committee's recent hearing and later teleconference on House Bill 344. I have reviewed our files and from that information, and some additional sources, prepared the consumer complaint analysis you requested. I apologize for the delay in supplying this information as other pressing duties interfered.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By

*Scotty Dawkins*

Scotty Dawkins  
Investigator  
Consumer Protection Section

/and

Enclosure

cc: Ron Lorensen  
Deputy Attorney General

All members of House Labor  
& Commerce Committee

Rep. Mike Miller and  
all Bill Sponsors

Senator Bill Ray

May 1983

DEPARTMENT OF LAW -- CONSUMER PROTECTION SECTION

AUTOMOTIVE WARRANTY COMPLAINTS

A Note on Complaint Statistics: A total of 133 auto warranty complaints were formally filed with Consumer Protection from January 1981 to April 1983. This figure, although significant, does not necessarily reflect the total number of warranty problems in Alaska.

A study by T.A.R.P. Inc., a Washington D.C. based research firm, revealed that 96 percent (96%) of consumers with a complaint never even tell the business of the problem, much less complain to a government agency. The Consumer Protection Section's experience over a ten year period is that for each consumer who complains, there are probably five or more additional consumers in a similar situation. Many Alaskans do not file a complaint with Consumer Protection because: they don't know we exist, they are distant from our offices, or our limited ability to negotiate voluntary settlements may not satisfy their needs. National automobile industry complaint statistics show that three percent (3%) of all new car buyers feel they were sold a defective vehicle and are frustrated in their attempts to have the defects corrected. If this three percent number holds true in Alaska (and indeed it might be higher) last year alone 846 Alaskans purchased defective vehicles that may meet the criteria established in HB 344.

AN ANALYSIS OF AUTO WARRANTY COMPLAINTS

January 1981 - April 1983

TOTAL NUMBER WARRANTY COMPLAINTS ..... 133

REGIONAL BREAKDOWN:

	<u>Number</u>	<u>Percentage</u>
South Central/Anchorage .....	101	76%
Interior/Fairbanks .....	14	10%
Southeast/Juneau .....	18	14%

COMPLAINTS BY PRIMARY ALLEGATIONS:

Multiple Repairs to Same Defect .....	28	22%
Unreasonable Delay in Repairs .....	17	14%
Multiple Defects .....	27	20%
Safety Related Defect .....	13	10%
Complaint Involves Defect Under Federal Investigation (FTC, NHTSA, EPA, ect.) .....	12	9%
Paint, Water Leak .....	7	6%
Miscellaneous .....	10	8%

<u>DISPOSITION OF WARRANTY COMPLAINTS:</u>		
	<u>Number</u>	<u>Percentage</u>
<u>Mediated to Consumer's Satisfaction</u> ....TOTAL:	73	55%
Repairs Completed .....	38	29%
Repair Costs Refunded .....	10	8%
Repair Cost Split between Factory and Consumer .....	8	6%
Manufacturer Supplied Parts but not Labor ....	5	4%
Manufacturer or Dealer Bought Car Back .....	5	4%
Miscellaneous .....	7	5%
	(73)	(55%)
 <u>Not Mediated to Consumer's Satisfaction</u> .TOTAL:	 48	 36%
 <u>Because Manufacturer's Response Was:</u>		
Warranty Expired .....	10	8%
Not Covered by Terms of Warranty .....	8	6%
Consumer Unable to Return Vehicle to Dealership, So Repairs Denied .....	2	2%
Factory Refused to Authorize Repairs .....	4	3%
Owner Abuse/Lack of Maintenance .....	3	2%
Consumer Refused to Return to Dealership: (Lost Confidence After Dealer's Attempts to Repair) .	3	2%
Refused Consumer's Buy Back Request .....	8	6%
Miscellaneous .....	10	8%
	(48)	(36%)
 <u>WARRANTY COMPLAINTS NOW PENDING:</u> .....TOTAL:	 12	 9%
Anchorage .....	8	6%
Fairbanks .....	2	2%
Juneau .....	2	2%

ECONOMIC IMPACT ON CONSUMERS

The owner of a defective vehicle suffers real economic harm, measured in: (1) hours/days of lost work, (2) cost of substitute transportation, and (3) after the warranty expires, cost of numerous repairs due to aftereffects of the defect.

Also, the economic life and value of a defective vehicle is seriously lessened, and this economic truth is recognized by the automobile industry itself. The following example is taken from the June 1983 "Blue Book," a widely used guide to used car values. Calculation of the Blue Book resale price of a 1982 Cadillac includes a deduction of \$1,335, because the vehicle is equipped with a diesel engine which has become nationally recognized as seriously defective. This sharp decrease in value, in comparison to a non-diesel version of the same Cadillac, is made despite the fact that this particular diesel engine had cost the owner \$925, extra at the time of purchase. Thus, the owner of the defective diesel vehicle can be said to have suffered an economic loss of \$2,460, in the value of his/her defective vehicle in comparison to the owner of a similar Cadillac without the defect.

## MEMORANDUM

TO  Rep. Walt Furnace, Chairman      DATE      May 04, 1983

FILE NO:

TELEPHONE NO:      279-0428

FROM:      NORMAN GORSUCH      SUBJECT      HB 344  
ATTORNEY GENERAL      Motor Vehicle  
By:      Warranties  
Scotty Dawkins, Investigator  
Consumer Protection Section  
AGO/Anchorage

The weekly newspaper "Automotive News" reported that the average 1982 automobile sold for \$9910.00. In Alaska I'm sure this figure is considerably higher, however, even at this price vehicles routinely are delivered to buyers with built-in problems. General Motors recently said "When a product is mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship". GM was speaking to the problems with the Oldsmobile diesel engine, the Chevette transmission they installed in their full size cars and the thousands of camshafts that failed in the 305/350 Chevrolet V8 since 1974. GM was making the understatement of the year, when they made this admission.

Consumer Reports often finds over twelve built-in defects in the new cars they test. Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built. Instead the

manufacturer relies on the pre-delivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer.

Most, if not all new car warranties require that you take your car back to the dealer for these warranty repairs. In Alaska the fact that your new car dealer may be hundreds of miles away somewhat complicates this requirement.

Even if you live in the Anchorage area warranty service can be a problem. Consumers often report to me that it takes two weeks or more just to get their car into the dealer's repair shop. It is clear many Alaskan automobile dealer's lack adequate service departments for the number of vehicles they sell. Indeed, I was recently told by a major manufacturer's representative that their largest Alaskan dealer had half the number of mechanics they should have, by national standards. Indeed, it is not unusual to find an Alaskan dealership that has more sales personnel than it has mechanics.

Last year the 25 Alaskan new car dealers sold 27,705 new vehicles, which works out to be 1,148 new vehicles per dealership. Automotive News, of May 1983, reports the sales per dealer of the average GM single line dealer is 265 vehicles. The

average Alaskan automobile dealership is big business with the average gross sales in excess of \$10,480,000. Indeed Alaska is host to two of the most profitable dealerships in the country and the only full line GM dealer this side of Kuwait.

Despite the healthy condition of the auto dealers in Alaska, Alaskan buyers of new cars have problems when it comes to obtaining service on the defective products they were sold. What recourse do these buyers have? In Alaska very little. While all vehicle manufacturers have a service support system spread across the country, a system that includes thousands of employees and dozens of offices, not one manufacturer has a office or an employee in this state that is responsible for any of the aspects of customer service. An Alaskan with vehicle problems has to rely on an Oregon or Washington service representative that visits once every 6 to 8, weeks or long distance telephone calls to Seattle, California or Detroit. In other states most of the manufacturers have set up third-party arbitration systems to help deal with these problems. In Alaska nobody has as of this date. Instead you may be referred to a Seattle based arbitration programs. A consumer may seek redress through litigation. However, the Small Claims limit of \$2000.00 precludes most of these cases. Alaskan attorneys normally are reluctant to handle these cases due to the lack of statutory definitions and minimal case law, besides the time and expense involved.

I don't wish to waste the committee's time with any unnecessary rhetoric but let me outline five separate complaints that I have recently been involved with. The first complaint came from a District Court Judge who for 18 months had been trying to have his 1980 vehicle's thirst for engine oil and an inoperative horn repaired. The dealer who had worked on this problem 10 times told the judge that the warranty had now expired, and since the dealer didn't build the car just sold it, he was not responsible. Instead the dealer offered half of the \$9000 selling price in trade for a new car. The judge then contacted the manufacturer only to be rebuffed. They would not even return his calls. It is well known that this brand of vehicle had an oil-burning defect but the Alaskan industry refused to acknowledge it.

The second complaint came from a Valdez resident who purchased a car from an Anchorage dealer. The salesman assured the buyer that warranty work could be handled in Valdez. The buyer also bought an additional service contract to expand his warranty to 5 years or 50,000 miles. Seven months later the vehicle's engine failed. Contact was made with the dealer who informed the consumer that repairs would only be made at the dealership and whatever expenses were accrued in towing the now disabled vehicle from Valdez to Anchorage would be out of the owners pocket. I tried but was unsuccessful in resolving this dilemma. The consumer ended up paying several hundred dollars to have his disabled truck shipped to Anchorage, and probably hundreds more to ship it home after the repairs.

The third complaint was by an Alaska State Trooper. His station wagon had been in the dealers shop 8 times in a futile battle to effect repairs to a defective engine. Our intervention finally convinced the manufacturer to replace the engine. However, the problems did not end. The replacement engine also failed. It was again repaired but to this day still uses an excessive amount of oil.

The fourth complaint came from a Ketchikan resident. The vehicle in question had been purchased in Washington. Again assurance was made by the selling dealer that warranty repairs could be done in Ketchikan. The vehicle, a small four wheel drive unit, developed a severe vibration. The consumer soon found out how reliable the warranty representations were. After having a number of local garages work on the problem, the consumer paid to have the vehicle shipped back to the Washington dealer. The dealer made a number of modifications to the vehicle then shipped the vehicle back to Ketchikan, at the consumer's expense. The problem persisted, however, and finally progressed to the point that the State Troopers ordered the car off the road. Our office was called and finally after technical information was received from Detroit a local garage was able to correct the defect. The car however, is in a deteriorated condition caused by the vibrations of the defect.

Alaska dealers and their employees have on numerous occasions stated they wish they could do more to correct these problems. On occasion I have been told by dealership personnel that a particular automobile was a lemon and should be brought back; however, their hands were tied and they could only follow manufacturers procedures or that the manufacturer would not authorize what needed to be done.

I could go on with many more "horror" stories but I think I've made my point. Alaskans have severe problems in obtaining service on their new cars, and House Bill 344 goes a long way to correct these woes.

# Alaska's auto dealers protest 'lemon law' proposal

Dealers: Law unneeded  
Consumer rep: Yes it is

By DEBBIE REINWAND ROSE  
Empire Staff Reporter

Alaska car dealers converged on teleconference sites throughout the state this morning to protest a bill its sponsors say will protect consumers who purchase autos.

Labeled the "lemon law," the legislation sponsored by local Reps. Jim Duncan and Mike Miller and Sen. Bill Ray would force car dealers to adhere strictly to the advertised warranty on a new car.

If a customer complained of a "substantial" problem not caused by owner abuse, the manufacturer or distributor would be given four chances to fix the vehicle. Failing that, the customer could receive a refund or a new car to replace the defective model.

Testimony at today's teleconference, organized at the request of car dealers in the state, ran heavily against the bill. Input came primarily from auto distributors.

Fairbanks car dealer James Masters said the consumer already has plenty of protection from defective autos.

"In case of a difference between the consumer and the dealership, they can go directly to the dealer, or the manufacturer," he said. "If that doesn't work, the (state) Consumer Protection Division is very good at following through on these

complaints."

Consumer Protection officials, however, favored the legislation as offering the car buyer "some recourse" when dealing with faulty vehicles, according to Scotty Dawkins in the Anchorage Consumer Protection office.

"In Alaska, it often takes two weeks or more just to get the cars into the service department. Not one manufacturer has a service representative in the state, so the consumer has to wait six to eight weeks for that rep to come up here," he said. When dealing with many warranty problems, the defect often must be checked by the service representative.

Alaska has a booming automobile sales business, Dawkins said, and dealers should be responsive to the public's needs. Last year, 27,705 cars were sold in the state for an average of 1,148 sales per

distributorship. In the rest of the nation, the average is 205 cars per year for each dealership, he added.

As an example of problems faced by Alaska car owners, Dawkins cited several complaints received over defective cars:

- One district court judge had his car worked on 10 times for, among other things, a defective horn. After all attempts to repair the car had failed, he was offered half the \$9,000 sticker price on a trade-in, said Dawkins.
- An Alaska State Trooper had his station wagon worked on eight times, and ended up having the engine replaced after the protection agency intervened in the matter.
- After purchasing a car in Anchorage, complete with a \$700 service contract, a Valdez resident had to pay towing fees bet-

Continued on Page 2

## 'Lemon'...

Continued from Page 1

ween Anchorage and Valdez when the engine quit running. He had been assured by the dealership in Anchorage that his service

contract would be honored in Valdez, Dawkins said.

Bill sponsor Miller said the crux of the testimony revolved around "people giving excuses for not conforming to the warranty."

"We are not trying to place the burden on the dealer. ... They are missing the point of the bill. If there is a major problem with a car, then it should be corrected. The manufacturer issues the warranty, and they are ultimately responsible for living up to that warranty," he said.

Extensive testimony from disgruntled car dealers continued until adjournment of the meeting. House Labor and Commerce Chairman Walt Furnace, R-Anchorage, has scheduled a statewide teleconference on the bill for May 18, from 4 to 6 p.m. in the Labor and Commerce room in the Behrends Building.

## Lemon law would force dealers to replace cars

By JIM ERICKSON  
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undrivable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety

hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

Daily News 9/8/83



Photo by Danny Daniels

al Walk for Hope, which was  
C-3.

## s a phrase for every misdeed

(Not to mention the ultimate disaster: "If you eat that now, you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teen-age years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the all-time classic, "Well, just consider yourself lucky, a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

# 'Lemon' bill would put the squeeze

By DEBBIE REINWAND ROSE  
Empire Staff Reporter

Hearings begin this week on a bill that should warm the hearts of everyone who has ever bought a "lemon" — a car that for some reason doesn't work right.

Commonly known as the "lemon law," this legislation, introduced by the Juneau delegation, would bind car dealers under state law to adhere strictly to the warranty they advertised when selling a car.

Under it, if a customer complains of a "substantial" malfunction during the warranty term, the dealer or manufacturer would

have to repair it. The dealer would be given four chances to bring the car up to par, and failing that, would then have to refund the customer's money or provide a new car.

"It's not an overly restrictive law; if anything it's conservative and could be tighter," said Rep. Mike Miller, D-Juneau. "What we're talking about correcting are major problems with the vehicle. This is not in regard to trivial repairs or problems that result because of owner abuse."

Currently, 12 states have similar legislation on the books. Montana and Wyoming just passed lemon laws.

While the bill is aimed at protecting the consumer, it should not

unnecessarily alarm car manufacturers.

"One feature is that the legislation doesn't spell out what the warranty is — that's up to the manufacturer. What it does is put the full force of state law behind customer satisfaction of that warranty," said Miller.

"The idea is if the distributor or parent company issues a warranty as a selling point for their vehicles, they should live up to it; no sloughing off," said Sen. Bill Ray, D-Juneau.

And Ray should know. Like a number of people who have contacted him about the bill, the senator once owned a "lemon."

"A lot of the time, the car wouldn't start. The dealer kept say-

ing we didn't know how to operate it. ... The car ended up being recalled because of a problem with the starter," he said.

During that experience, Ray ran into delays getting the car fixed. He advocated the clause in the bill putting a limit on how long the car can be out of commission. That provision would allow the customer a refund or new car if the "lemon" has been out of service for 30 days during the warranty period or one year, or if repair services are not available to the owner for reasons beyond the owner's control.

Rep. Jim Duncan, D-Juneau, has also had a "couple of

lemons," and backs the bill because it would benefit Alaskans.

"You run into this every once in awhile and it should be cleared up so the consumer is adequately protected," he said.

The measure has been introduced in both houses, and while House passage is unclear, the co-sponsorship of several majority coalition members may help the bill.

The first hearing on the lemon law will be Thursday at 8:45 a.m. in the Labor and Commerce Committee, room 210 in the Behrends Building.

## Buyer gets \$85,000 for lemon

MEMPHIS, Tenn. (AP) — A man who complained about the treatment he got from an auto dealer after his new car burned too much oil has been awarded \$85,000 by a Circuit Court jury.

Charles Pardue was awarded \$10,000 for actual loss and \$75,000 in punitive damages in the judgment reached Tuesday.

"As far as the repair of his car was concerned, it was poorly handled," said jury foreman James Reid Jr.

Reid said jurors discussed awards ranging from \$20,000 to \$500,000 but settled on the final figure as a "fair compromise."

Randall Noel, the lawyer for Lewis Ford Inc., where Pardue bought his 1976 Ford Grenada, said his client is considering an appeal.

Pardue, a resident of Oakland, Tenn., bought the car in 1977 for \$5,178, but said it soon began using too much oil.

He said it took two years to get the car fixed and he was charged \$1,500 for a new engine he never ordered.

*Tunnicliffe  
4/14/83*

# Lemon law

## deserves support

Sometimes it seems that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often nowadays, expensive cars transform themselves into "lemons" before their owners' very eyes.

Before a sale is made, salesmen point out all of the wonderful aspects of a new car. It's pretty, the doors slam with a solid "thunk" and it sounds good idling there in front of the dealer.

But a select few cars turn into "lemons," some the minute they are driven off the lot. Some don't start right; some don't stop right; some don't do anything right.

Any dealer is more than happy to provide buyers with a copy of the warranty manufacturers give for their cars. Some last for a year; some last for five years. But unless the dealer and manufacturer back up the claims of those warranties, they aren't worth the paper they are printed on.

Introduced in the Alaska Legislature last week was a bill aimed at taking the "lemon" out of the lives of Alaska car buyers. The bill, whose prime sponsors are Juneau Sen. Bill Ray in the Senate and Reps. Jim Duncan and Mike Miller in the House, does nothing more than make manufacturers and dealers live up to the promises made in warranties.

For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

Because of the tremendous expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to rot on them and they were unable to get satisfaction from the dealer.

It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

Dealers should welcome the advent of a "lemon law" in Alaska. It means dealers that have been standing behind their products won't be affected in the slightest. Other dealers, who are unwilling to stand behind their products and the warranties that go with them, will — and should — find themselves having to shape up.

The "lemon law" bill deserves your support.

### Berry's World



When Widget shut the door he said, "I want you to meet my Master Robot, Turnbill. He is programmed to program the robots on the floor."

Turnbill gave me a steely look and reluctantly put out his arm which I shook.

"How many sneakers did we make today, Turnbill?" Widget asked.

Turnbill's lights blinked, and a deep voice said, 12,890."

Widget rubbed his hands. "I used to make that many in a week."

## Eyeing the new

WASHINGTON (NEA) — "I can make a million through the union," Jackie Presser boasted several years ago to a magazine in his hometown of Cleveland. Indeed, the union has made him rich — and now it's about to make him famous as well.

The union is the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America, arguably the country's most corrupt labor organization.

When the Teamsters' executive board met recently to select a new president for the union, it could have chosen a leader whose reputation had not been blackened by compelling evidence of regular affiliation with organized crime figures.

M.E. (Andy) Anderson, area director of the union's Western Conference, is hardly a candidate for sainthood but he surely would have been more suitable as president than Presser if the Teamsters were serious about restoring at last a semblance of integrity to their organization.

The same is true, although perhaps to a lesser extent, of the other two "dark horse" contenders for the presidency — Joseph W. Morgan, area director of the union's Southern Conference and Donald Peters, a Chicago Teamster leader.

But, in an election preordained as far back as the union's 1981 convention, all three of those men were summarily rejected in favor of Presser, a glib, portly 56-year-old veteran of more than three decades as a Teamster organizer.

A detailed affidavit filed by the FBI in connection with a criminal case in U.S. District Court in Los Angeles quoted FBI informants as stating that Presser was "controlled" by members of the Mafia.

In testimony before the New Jersey Commission of Investigation, a state police sergeant identified Presser as an intermediary for syndicate members seeking loans from the Teamsters' pension and welfare funds.

Some of the most disturbing allegations about Presser come from Aladena "Jimmy the Weasel" Fratianno, believed to be the first Mafia member to testify against another Mafioso in court. His testimony has aided federal prosecutors to convict approximately two dozen organized crime figures.

According to Fratianno, Presser's union activities generally have been conducted under the direction and control of James T. "Blackie" Licavoli, the reputed head of the Cleveland "family" of the nationwide crime syndicate. "Jackie Presser, he told me himself that 'I don't do nothing unless Blackie tells me,'" Fratianno said in sworn court testimony.

How does Presser respond to those allegations? He blithely denies any knowledge of La Cosa Nostra. "There's no organized crime that I know of as a person."

Presser offers a similar see-no-evil response to the documented examples of massive abuse of the union's Central States, Southeast and Southwest Areas Pension Fund. "Despite the many claims and accusations of various governmental agencies, the Central States (Fund) is a sound, well managed plan."

In 1976, Presser's father, William, was forced to resign as a trustee of the fund after he invoked his Fifth Amendment right against self-incrimination while being interrogated about trust fund abuses by federal investigators.

William Presser's position as a fund trustee was inherited by his son, Jackie, but he too was forced to resign only one year later and is one of numerous Teamster leaders being sued by the Justice Department for approving more than

## Window of vu

The New York Times

The basic assumption of arms control may be permanently... the report of the Secretary's commission — a document

# Alaska State Legislature

OFFICE OF THE MINORITY



POUCH V  
JUNEAU, ALASKA 99814

## House of Representatives

April 8, 1983

### PRESS RELEASE

Today the Alaska Legislature took its first step in determining whether Alaskans should be protected from automotive "lemons". Rep. Mike Miller (D- Juneau) introduced a bill to require better warranty service by auto manufacturers and distributors and also grant owners of defective cars a <sup>statutory</sup> ~~statutory~~ guaranteed remedy. This type of legislation already exists in four states and is currently under consideration in eight other Legislatures. Rep. Miller stated, "My aim in introducing this bill is to reverse the incentives, to make it worthwhile to the dealers and auto companies to do the warranty work they promised and do it in a timely manner."

If passed, this bill would not require manufacturers to offer warranties on new cars but it would mandate that any warranty granted be enforced and warranty work be done within a reasonable time. Also, this bill sets standards for repair of new autos and will make it easier for consumers to legally pursue their warranty rights. Rep. Mike Miller also commented, "Hopefully this mixture of legislation will result in lemon aide that is to everyone's taste!"

end

of them to date. One of the main arguments for establishing a cooperative bank is the belief that consumer cooperatives are effective in holding down prices—they can force supermarket chains, for instance, to lower prices to stay competitive.

The 1978 act mandating the co-op banks' establishment (P.L. 94-351) summed up the importance of cooperative businesses, stating that "user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons." Advocates of the bank also expect self-help consumer cooperatives to take root in the inner-city breathing new financial life into areas all but abandoned by profit-hungry retailers.

The National Consumer Cooperative Bank will consider loan requests from any legally chartered nonprofit cooperative business. For more information contact Jon Weimer of the U.S. Department of Agriculture's Economic, Statistics, and Cooperatives Service at (202) 447-8707.

**PROTEIN PRICE**

Americans are notorious consumers of red meat, but as inflation cuts into lofty lifestyles we may have to rely more on alternate protein supplies. The Department of Agriculture's *National Food Review* (Summer, 1979) reports that, as always, red meats are the most expensive protein source, with lamb chops heading the list. Dry beans not surprisingly, are the cheapest, with such items as eggs, chicken, tuna, and pork falling somewhere in-between.

For 20 grams of protein, or one-third the daily requirement recommended for a 20-year-old male, you can pay anywhere from 13 cents to \$1.09 depending on the food you select. Peanut butter remains a bargain at 17 cents a serving as do eggs, milk and cheese at 20 to 35 cents a serving. At 24 to 30 cents, poultry is another good buy, and moderately priced meats such as liver, chuck ham, rump roast, pork loin and sirloin are not

too bad at 20 to 60 cents a serving. Fish can be either a bargain or a luxury, depending on the type.

As the accompanying table reveals, inflation, since 1976, has jacked up prices on all the protein sources—except for eggs and ham which saw price declines and

**Cost of 20 Grams of Protein From Specified Foods**

	1966	1976	1978
Dry beans	05c	12c	13c
Peanut butter	10	16	17
White bread	11	18	18
Beef liver	15	19	20
Eggs, large	15	21	20
Chicken (whole, ready to cook)	15	22	24
Hamburger	13	21	25
Fluid, whole milk	10	24	25
Turkey (ready to cook)	18	25	28
Chicken breasts	18	21	30
Tuna, canned	16	23	35
American processed cheese	16	33	35
Chuck beef	12	35	39
Ham, whole	26	43	40
Round beefsteak	22	43	43
Liverwurst	NA	45	48
Rump roast	29	45	48
Frankfurters	26	43	50
Pork loin	25	41	51
Salami	28	41	52
Sardines, canned	15	50	59
Canned ham	28	51	56
Sirloin	33	54	60
Ocean perch	27	51	66
Bologna	39	59	67
Rib Roast	31	59	68
Pork chops	37	65	68
Veal	32	64	70
Haddock fillet	23	59	72
Pork sausage	37	71	83
Potterhouse	47	71	78
Bacon, sliced	50	71	99
Lamb chops	45	71	109

white bread which remained the same. The largest increases in the two-year period covered were 25 cents for lamb chops, 15 cents for perch, 13 cents for haddock, and 10 cents for bison.

One note of caution regarding the statistics—remember that the Department of Agriculture's figures here are for 1978. Thus in shopping for the most protein per penny, be sure to figure in unusual 1979 price hikes affecting such items as hamburger and other red meats.

Short-term price fluctuations at the meat counter should also be kept in mind.

**"LEMON" AID**

Question: When is a lemon not a fruit? Answer: When it's a new-car buyer's living nightmare. Everybody expects a few years of highway happiness with a new car, but there are always a few unlucky souls who wind up with a sour feeling and a depleted bankbook over a car they bought that only "pull-puts" when it should go "zoom."

There's a bill now on Capitol Hill that promises to sweeten up the lives of consumers saddled with a car that just seems unfixable. Sponsored by Rep. Bob Eckhardt (D.-Tex.), H.R. 1005 would require better warranty performance by auto manufacturers and grant owners of defective cars the choice of a refund or replacement if their car can't be repaired after a "reasonable" number of attempts.

Currently, manufacturers have little to gain on warranty work and may discourage dealers from backing up warranties by refusing or delaying reimbursements or reimbursing at lower labor rates. As Eckhardt testified before the Commerce Committee's Consumer Protection and Finance Subcommittee, "My aim in introducing H.R. 1005 is to reverse the incentives, to make it worthwhile to the dealers and mechanics and auto companies to do the warranty work they promised and do it in a timely manner."

If passed, the bill would not require manufacturers to offer warranties, but it would mandate that any warranty granted be a "full" rather than "limited" one—to cover all components except minor maintenance parts such as filters, bulbs, and belts. The bill would also require that warranty work be done within a "reasonable" time; make it easier to bring class-action suits against manufacturers; and help consumers who sue by awarding them attorney's fees.

Predictably, the Eckhardt bill faces strong opposition from the auto repair industry, so consumers would do well to get in there and lobby on their own behalf. Ironically, even American Motors, which already offers a full warranty on new cars, opposes the bill—on the ground that it will reduce their competitive edge in the warranty area.

52V for price history

# MEMORANDUM

TO:  Mike Ford, Legislative Aid to  
Representative Mike Miller

DATE: March 18, 1983

FILE NO:

TELEPHONE NO: 279-0428

FROM: Connie J. Sipe  
Assistant Attorney General  
Chief, Consumer Protection Section  
AGO/Anchorage

SUBJECT: Lemon Law

Enclosed please find a copy of the California Lemon Law, and a copy of the Connecticut Lemon Law. The statute which you had referred to as possibly being a Pennsylvania law is in fact the Connecticut law, which is noted in their most recent supplement as "P.A.," which merely stands for "public act." To our knowledge, no states except Connecticut and California have passed lemon statutes.

Also enclosed you will find not a draft but a "sketch" of a lemon law for Alaska, with a prefatory page of commentary. Please note that this sketch of a bill does not in any way conform to Alaska drafting standards on legislation, but our office has been so busy that it was all that I and our auto investigator could do on short notice to throw together a "cut and paste" which combined parts of the Connecticut with parts of the California statute, and inserted some other modifications that would be needed to address the specific warranty problems in the Alaskan market.

As some background information on warranties, you should realize that many of the American manufacturers are now offering 5-year warranties rather than the former 1-year or 12,000 mile warranties. Both the California and Connecticut lemon laws seemed to be based on the assumption that the 1-year warranty would continue to be the industry standard. On the other hand, in terms of the leverage provided by the lemon law, perhaps it is appropriate that only the very "worst" lemons, those cars with massive defects showing up within 1-year or 12,000 miles should be covered by a state lemon law.

The way we set up the draft that we sent down to you separates out the manufacturer's responsibilities in two areas: First, the ~~simple duty to follow through on their vehicle warranties, and to maintain a sufficient number of authorized repair shops in the state to make the warranty effective.~~ Section One does not have any time deadline other than the terms of the express warranty given by the manufacturer or 1-year, if 1-year would be the longer of the two dates. Our auto investigator, Scotty Dawkins, and I feel that Section 1 is very important in Alaska, because one of the main warranty problems we see is the fact that for most of the state, a warranty received with a new car is

Mike Ford, Legislation Aid  
to Rep. Mike Miller

March 17, 1983  
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virtually useless. Alaskan consumers outside of the major metropolitan areas receive virtually no value for their warranty, but we do know that a warranty is a significant part of the purchase price of a new vehicle. (Scotty would be willing to meet with you and talk with you about this, because he has had extensive experience inside the industry in Michigan, working with warranty problems both there and here.)

It would be important also that any bill which is meant to ~~encourage the manufacturers to appoint or contract with independent repair shops in the smaller Alaska communities, provide a standard of payment that would be high enough to encourage those independent repair shops to enter into such agreements.~~ A very real problem in the area of manufacturer's warranties is that the manufacturers compensate their dealerships for warranty work based on a flat rate manual which has very little relationship to the actual time needed to complete a warranty repair. Also, the times suggested for repair in the manufacturer's manual assume that the person doing the work will have all the specialized tools and diagnostic equipment of a full dealership, as well as factory trained technicians who know about the latest problems or technology. An independent repair shop in a rural area attempting to correct a defect of any complexity soon discovers that it takes them many more hours to cure the problem than it would a factory trained technician back in the dealership's more fully equipped shop.

Another problem apparently unique to Alaska is the ~~incredible delay in getting warranty repair work done.~~ Although only one manufacturer offers in its express warranty to provide substitute transportation during warranty repairs, most dealerships in the lower 48 do offer complimentary loaner vehicles to almost all warranty repair customers if repairs are delayed beyond a few days. Also, in the lower 48 most dealerships would be chagrined if they could not get the car into the shop on a warranty repair within two to three days. In Alaska, one of our largest dealerships "prides" itself on being able to get a non-functioning vehicle, under warranty, into the shop to be "looked at" in 10 business days.

The problem in Alaska is further aggravated by the fact that ~~many of the dealerships do not stock a significant inventory of parts,~~ but order parts specially as the warranty calls for. (In fact, if a vehicle under warranty needs a part not available at the Alaska dealership, the customer is usually required to pay the air freight to get the part shipped promptly, or else wait for the surface shipment of the required parts.) To address these problems, we inserted a Section 1(c), which gives the manufacturer two weeks leeway, then imposes a duty to provide substitute transportation.

Mike Ford, Legislation Aid  
to Rep. Mike Miller

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We also tried to put in some reasonably balanced criteria about what constitutes a customer's inability to deliver a vehicle to a dealership or authorized agent because of distance. You will find this in Section 2(d). The way we set up this statute, Section (2) really contains the heart of the "lemon" law provisions, namely the presumption of when a manufacturer has had a reasonable chance to attempt repair, and the manufacturer's duty to make reimbursement to a customer who has purchased a lemon. (Section 2's more powerful provisions are for the first year or 12,000 miles.)

We wrote some definitions, but we would still need to figure out definitions for "population center," and also for what a "vehicle system or assembly" is.

You will note that the other states focus in on whether a manufacturer has attempted to repair the "same non-conformity." What Scotty Dawkins tells me is that that language could provide an incredibly large loophole for the manufacturer. For instance, if a customer has a portion of the transmission "system or assembly" worked on four times, it is possible that the first two times the manufacturer will attempt to repair the least expensive portion of the system, hoping that that will be sufficient. Often in warranty repairs Scotty sees that the necessary work is done in a progressive manner; namely the least expensive and least complex repairs are attempted first, but when this doesn't work, only then does the manufacturer reluctantly dig into the larger system or into some more complex component of the system, which in fact may be the underlying problem. So, you see that Scotty wanted to make sure that the same nonconformity was broad enough to cover the same malfunction within a system. For example, your engine develops a severe oil leak, and it is repaired by repacking a seal. The engine then develops a knock, and the dealer attempts to correct it by first installing a new oil pump, then a crankshaft, and finally corrects the knock by rebuilding the engine. A few weeks later while operating the vehicle on the highway several hundred miles from home the engine seizes. That is the malfunction or the defect of the system that should trigger the statutory remedies.

We also did not write in any law enforcement mechanism into the statute, since I assumed you're thinking of it being a private action lemon law as in other states. You might want to note all the background warranty statutes that do exist in the State of California, and that provide for treble damages and affirmative defenses and other things. I am including those in this packet, for your use. You may also want to look at whether you want to make any or all of this act a violation of the Unfair Trade Practices Act if not followed. (You might get very different political reactions to those two proposals.)

Mike Ford, Legislation Aid  
to Rep. Mike Miller

March 17, 1983  
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I need to disclose to you a possible conflict of interest on this request. I am currently president of a nonprofit corporation known as the Conflict Resolution Center (CRC), which is a "third party dispute resolution mechanism," offering mediation and arbitration in the Anchorage municipality. In fact, the Conflict Resolution Center has made approaches to representatives of several automobile manufacturers about whether or not they would wish to use the services of CRC as a third party dispute mechanism under the federal Magnuson-Moss Warranty Act. At this time, there is no such specific relationship contemplated between CRC and any manufacturer. However, that is a possibility, so I thought I should mention my relationship to CRC.

Scotty Dawkins will be in Juneau on March 28 and, despite the official holiday, is very eager to discuss the lemon law concept with you.

/aw

## WARRANTIES - MOTOR VEHICLES - REPAIRS

COMMENTARY: Under existing case law, a manufacturer who is sued because of failure to service or repair goods to conform to applicable express warranties after a reasonable number of attempts may be required by a court to either replace the goods or reimburse the customer. However, the costs of determining in the court what is a "reasonable" number of repair attempts and by what method a customer should be reimbursed makes such suits very difficult and costly.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if, during the first year or 12,000 miles of the applicable express warranty (note that some warranties are now "5-year"): (1) the same malfunction or defect has been subject to repair four or more times by the manufacturer or its agent or authorized dealers or (2) the vehicle is out of service by reason of repair (or repair delays) of a warranty covered malfunction or defect for a cumulative total of more than 30 business days during the first year of the warranty.

The bill would provide that the presumption may not be asserted by the customer until after the customer has resorted to an in-state qualified third party dispute resolution process, if one is available in state. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the customer elects to accept it, and that if the customer is dissatisfied with the third party decision the customer may assert the presumption in an action to enforce the buyer's rights as specified. (This tracks the federal Magnuson-Moss Warranty Act.) The bill also would require manufacturers to pay for the shipping of parts.

SECTION 1. (a) If a new motor vehicle does not conform to all applicable express warranties, and the customer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties, or during the period of one year following the date of original delivery of the vehicle to the customer, whichever is the later date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of the warranty term or the one-year period;

(b) Every manufacturer of motor vehicles sold in this state for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities, reasonably close to all areas where its vehicles are sold, to carry out the terms of such warranties; and designate and authorize in this state as service and repair facilities independent repair or service facilities, reasonably close to all population centers where its motor vehicles are used, to carry out the terms of such warranties.

As a means of complying with this section, a manufacturer shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer shall also fairly reimburse the repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of: (1) the customer's delivery of the vehicle to the manufacturer's designated repair facility; or, (2) the customer's notification to the manufacturer of a warranty malfunction which renders the vehicle inoperable; reasonable charges for the rental of substitute transportation shall be paid by the manufacturer, or the manufacturer shall provide a substitute vehicle, from the date two weeks after delivery or notification of the vehicle until repairs are complete.

(c) It shall be the duty of the customer to deliver the vehicle to the nearest authorized dealership or manufacturer authorized service and repair facility within this state unless: due to the malfunction or defect the vehicle cannot safely be operated, or the delivery of the vehicle cannot be made by road, or by shipment by boat or ferry, of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of the malfunction or defect to the manufacturer or its service and repair facility shall constitute return of the vehicles for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer shall, at its option, repair the vehicle at the customer's residence, or arrange for transporting the vehicle to its repair facility. All reasonable costs of transporting the vehicle when, pursuant to the above, a customer is unable to effect return, shall be at the manufacturer's expense. The reasonable costs of return transport of a non-conforming vehicle to the customer after the vehicle's delivery to the repair facility shall be at the manufacturer's expense.

SECTION 2. (a) Should the manufacturer or its representative in this state be unable to service or repair the vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the vehicle or reimburse the customer in an amount equal to the purchase price paid by the customer, less a reasonable amount for use by the customer prior to the discovery of the non-conforming malfunction or defect.

(b) 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 customer or 12,000 miles, whichever occurs first, either (1) the same vehicle system or assembly has been subject to repair for non-conforming warranty problems four or more times by the manufacturer or its agent, or (2) the vehicle is out of service by reason of repairs (or repair delays) by the manufacturer or its agents, or the malfunctions or defects, for a cumulative total of more than 30 business days since delivery of the vehicle to the customer.

(c) If a qualified third party dispute resolution process exists in Alaska and the customer 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 (b) may not be asserted by the customer until after the

customer has initially resorted to the third party process as described in paragraph (d). Notification of the availability of the third party process is not timely if the customer suffers any prejudice resulting from any delay in giving notification. If a qualified third party dispute resolution process does not exist in Alaska, or if the customer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the customer may assert the presumption provided in paragraph (b) in an action to enforce the customer's rights under (a). 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 Alaska law with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

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

(e) It shall be an affirmative defense to any claim under this act: (1) that a nonconforming malfunction or defect does not substantially impair the uses, values or safety of the vehicle; or (2) that a nonconformity is the result of abuse, unreasonable neglect, or unauthorized modifications or alterations of the vehicle by the customer.

SECTION 3. For the purposes of this chapter the following terms have the following meanings:

(1) "Malfunction or defect" means a nonconformity with an express warranty which substantially impairs the use, value, or safety of the new motor vehicle.

(2) "Customer" means the purchaser, ~~other~~ than for the purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person applicable to such motor vehicle, and any other person entitled

by the terms of such warranty to enforce the obligations of such warranty.

(3) "Vehicle" means a "new" motor vehicle which is the subject of a manufacturer's express new car warranty and specifically includes motorcycles and motorhomes.

(4) "Population center" means a community of over 1,000 persons (or \_\_\_\_ miles of publicly funded roads).

(5) "Vehicle system or assembly" means . . .

month of driving the 1970 models, ". . . the most lasting impression is that even the carefully selected display models [made available to newsmen] are put together poorly." He experienced incurable boiling-over in two Buick radiators, a nonfunctioning air conditioner in a Thunderbird, a seat belt in a Chrysler which resisted all efforts to pull it from its housing, and an AMC Hornet which lost several parts to the road when it hit a succession of bumps.

*Consumer Reports*, in its April 1970 *Auto Buying Guide*, reports that a 1970 Plymouth station wagon, bought by the magazine for testing, was delivered with 52 observable assembly defects, including an inoperative turn signal, luggage compartment key broken off in the lock, several exhaust leaks, defective heater control, a misaligned front end, and badly aimed headlights. Other models displayed "the normal pattern of assembly defects and early failures," that is 20 to 30 each.

Short cuts in assembly frequently result in defects.

The Police Chief of a small southern California city encountered a gross assembly "defect" in his 1967 Thunderbird. For a year after he bought the car, he complained of severe vibrations, and had the wheels, tires, alignment, and drive shaft checked, but to no avail. Then, a local Ford dealer, in checking a clutch problem, discovered a metal weight welded to the face of the flywheel. A knowing service manager explained to him that the weight had been placed there during the assembly process as a crude way of attempting to correct a serious imbalance in the engine itself. Apparently Ford had tried to salvage a reject engine near the end of a production run.

Other defects result from assembly line short cuts when cars are accidentally scratched or dented and require repainting; they are run through a special paint-drying oven to accelerate the drying process. Baked along with the paint (at temperatures up to 300 degrees) are all the delicate rubber parts, including weather stripping, wiper blades, hoses, belts and tires. The results are leaks, premature wear on all rubber parts, especially tires and wiper blades, and wind noise around the windows from shrinkage of the weather seals during the heat treatments.

Most conventional defects originate in the assembly process.

In a letter dated January 26, 1970, an inspector in a major Ford production facility wrote:<sup>11</sup>

There are instances, perhaps daily, when inspectors are ordered by supervisors to OK defects or omissions from cars. [When a defect is detected in a car, a colored card is affixed to the car noting the defect.] One of the inspectors at the final buy-off end of the production line showed me a list of motor numbers, dates and defects accepted. They include seat belt torque and front-end

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in writing to perform, over a fixed period of time, services relating to the maintenance or repair of an instrument, apparatus, or contrivance, including any accessory thereto, which is used or intended to be used by any person in the mitigation or treatment of an injury or to replace the structure or any function of the body.

At the time of sale in which neither the seller nor any other person related to the seller nor any person who participates in the diagnosis of the buyer's condition is present, the device.

§ 1791.2 Express warranty; definition

(Amended by Stats.1977, c. 508, p. 1872, § 1; Stats. 1978, p. 3492, § 1.)

In general

Prescription eyeglasses, contact lenses and other ophthalmic goods are not assistive devices within the meaning of Song-Beverly Consumer Warranty Act (§ 1790 et seq.), which imposes certain warranty obligations upon the retail sellers of consumer goods, unless they are sold for those who are legally blind and in some manner assist a limited vision of those so disabled. 63 Ops. Atty. Gen. 670, 2-27-80.

Where a consumer unknowingly purchases a motor vehicle which cannot be registered because of failure to comply with the Vehicle Code and regulations, the consumer has an action on the implied warranties of merchantability and fitness under the Consumer Warranty Act. Ops. Atty. Gen., 74 A.J. 14016.

Remedies of buyers

"Implied warranty that goods are merchantable shall meet each of the following:

- (1) The contract description.
- (2) The goods are used.
- (3) The goods are labeled.
- (4) The act made on the container or label.
- (5) The act when the retailer, distributor, or manufacturer purpose for which the consumer is relying on the skill and judgment of the manufacturer, then there is an implied warranty and (2) that when there is a specific intention to make a warranty, then there is an implied warranty fit for the particular needs of the consumer.

Merchantability and where present in duration with an express warranty provided the duration of the implied warranty have not expired following the sale of new goods for an express warranty is not proof, the duration of the implied warranty is as stated above.

or additions by amendment

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

(Amended by Stats.1978, c. 991, p. 3059, § 2; Stats.1979, c. 1023, p. 3494, § 1.5.)

1978 Amendment. Substituted in subd. (d) "has the remedies provided in Chapter 6" for "may bring an action for the recovery of damages pursuant to the provisions of Chapter 6" and "In any action brought under such provisions, Section 1794 of this chapter shall apply" for "in such action, the provisions of subdivision (b) of Section 1794 of this chapter shall apply".

1979 Amendment. Provided in subd. (b) that where there is a sale of an assistive device sold at retail in this state, there is an implied warranty by the retailer that the device is specifically fit for the particular needs of the buyer.

device sold at retail in this state, there is an implied warranty by the retailer that the device is specifically fit for the particular needs of the buyer.

Law Review Commentaries: Implied warranties on used cars. (1975) 9 U.S.F.L.Rev. 539. Magnuson-Moss Warranty Act: Turning tables on caveat emptor. Christopher Smith (1977) 13 C.W.L.R. 391.

(a) A written statement arising out of a sale to the consumer of a consumer good, in which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good, or provide compensation if there is a failure in utility or performance.

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

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

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

(Amended by Stats.1978, c. 991, p. 3060, § 2.5.)

1978 Amendment. Inserted in subd. (b) a provision that if formal words such as "warrant" or "guarantee" are used, an express warranty is created and deleted from subd. (b) a reference to the presence of a specific intention to make a warranty.

Law Review Commentaries: Implied warranties on used cars. (1975) 9 U.S.F.L.Rev. 539.

ARTICLE 3. SALE WARRANTIES

- Sec. 1793.02 Assistive devices sold at retail; written warranty; remedies of buyer (New).
  - 1793.05 Vehicle manufacturers; alteration of vehicles into housecars; assumption of original manufacturer's warranty (New).
  - 1793.6 Liability of manufacturer to independent service and repair facility (New).
  - 1794.3 Triple damages in actions by buyers; exceptions (New).
  - 1795.6 Tolling or expiration of warranty period during time of repairs (New).
  - 1795.7 Liability of manufacturer; extension upon tolling of warranty period (New).
- § 1792. Implied warranty of merchantability; manufacturers and retail sellers; indemnity

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

(Amended by Stats.1978, c. 991, p. 3080, § 3.)

1978 Amendment. Deleted from the first sentence "or consignment for sale" following "sale"; inserted in the first sentence the retail seller's implied warranty that the goods are merchantable; and added the second sentence.

Law Review Commentaries: Implied warranties on used cars. (1975) 9 U.S.F.L.Rev. 539. Products Liability: Three theories of recovery—or twelve? Stanton G. Darling II (1991) 56 S. Bar J. 194.

Asterisks . . . indicate deletions by amendment

§ 1792.1

CIVIL CODE

§ 1792.1 Goods for particular purpose; implied warranty of fitness by manufacturer

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

(Amended by Stats.1978, c. 991, p. 3060, § 4.)

1978 Amendment. Deleted "or consign- ment for sale" following "sale".

Law Review Commentaries Products liability: Three theories of recovery—or twelve? Stanton G. Darling II (1981) 56 S. Bar J. 194.

§ 1792.2 Goods for particular purpose; assistive devices; implied warranty of fitness by retailer or distributor

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

(b) Every sale of an assistive device sold at retail in this state shall be accompanied by the retail seller's implied warranty that the device is specifically fit for the particular needs of the buyer.

(Amended by Stats.1978, c. 991, p. 3060, § 5; Stats.1978, c. 1023, p. 3494, § 2.)

1978 Amendment. Deleted "or consign- ment for sale" following "sale".

1979 Amendment. Added subd. (b).

Law Review Commentaries Products liability: Three theories of recovery—or twelve? Stanton G. Darling II (1981) 56 S. Bar J. 194.

§ 1792.4 Written notice to buyer; disclaimer of implied warranties on "as is" or "with all faults" sales

Law Review Commentaries Consumer Auto Leasing: Clearing the smog. John D. Ayer (1975) 6 Pacific L.J. 147.

§ 1793. Right to make express warranties; limitation, modification or disclaimer of implied warranties

Except as provided in Section 1793.02, nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make express warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods.

(Amended by Stats.1978, c. 991, p. 3061, § 6; Stats.1978, c. 1023, p. 3494, § 3.)

1978 Amendment. Substituted in the second sentence "in transacting a sale in which express warranties are given" for "making express warranties".

1979 Amendment. Inserted the phrase of exception in the first sentence.

Law Review Commentaries Implied warranties on used cars. (1975) 9 U.S.F.L.Rev. 539. Products liability: Recovery of economic loss. (1977) 13 C.W.L.R. 297.

§ 1793.02 Assistive devices sold at retail; written warranty; remedies of buyer

(a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

Underline indicates changes or additions by amendment

(b) The language presc warranty in at least 10- buyer at the time of the sa

(c) If the buyer return warranty, the seller shall device or, if appropriate, ticular needs of the buyer. It is specifically fit for th refund to the buyer the to ed, and the seller shall pro device or other considerati ly cancel or cause to be c ments executed by the buyr under this section, no cha with the purchase, fitting, it

(d) With respect to the re tion, or agency known by t device, this section and subd that the device be specificall

(e) This section and subdi an assistive device which is sale price of less than fifteen

(f) The rights and remedi of Section 1792.2 are not su remedies of the buyer under cumulative, and shall not be or any other party or to sup other section of this chapter o

(g) Section 1795.5 shall not purposes of the Song-Beverly device shall have the same r device.

(h) The language in subdvi purposes of Sections 1793.2 and (Added by Stats.1979, c. 1023, p.

Library References Sales § 260. C.J.S. Sales § 307 et seq.

§ 1793.05 Vehicle manufacturer of original manufa

Vehicle manufacturers who u to any new product warranty, u vehicle manufacturer for any a are, by virtue of any act of the by the original vehicle manufact (Added by Stats.1977, c. 673, p. 2)

Section 6 of Stats.1977, c. 873, provided:

§ 1793.1 Language of express wa service and repair facil

(a)(1) Every manufacturer, dis: with respect to consumer goods understod language and clearly ties.

(2) Every work order or repai clearly and conspicuously incorpor.

Asterisks . . . indicate deletions

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be cancelled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any sale of an assistive device which is a catalogue or similar sale or which involves a retail sale price of less than fifteen dollars (\$15).

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1793.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1765.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Reverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections 1793.2 and 1793.3.

(Added by Stats.1979, c. 1023, p. 3495, § 4.)

Library References  
Sales ~~260~~  
C.J.S. Sales § 307 et seq.

**§ 1793.05 Vehicle manufacturers; alteration of vehicles into housecars; assumption of original manufacturer's warranty**

Vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

(Added by Stats.1977, c. 873, p. 2634, § 1, operative July 1, 1978.)

Section 1 of Stats.1977, c. 873, p. 2635. "Section 1 of this act shall become operative on July 1, 1978."

**§ 1793.1 Language of express warranties; identification of warrantor; statement; service and repair facilities**

(a)(1) Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth such warranties in readily understood language and clearly identify the party making such express warranties.

(2) Every work order or repair invoice for warranty repairs or service shall clearly and conspicuously incorporate in 10-point boldface type the following state-

Asterisks \* \* \* indicate deletions by amendment

ment either on the face of such work order or repair invoice, or on the reverse side thereof, or on an attachment to the work order or repair invoice: A buyer of this product in California has the right to have this product serviced or repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws.

If the required notice is placed on the reverse side of the work order or repair invoice, the face of the work order or repair invoice shall include the following notice in 10-point boldface type: Notice to Consumer: Please read important information on back.

A copy of the work order or repair invoice and any attachment thereto shall be presented to the buyer at the time that warranty service or repairs are made.

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

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

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

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

(Amended by Stats.1972, c. 1293, p. 2584, § 1; Stats.1980, c. 394, p. —, § 1; Stats. 1981, c. 150, p. —, § 1, urgency, eff. July 8, 1981.)

1972 Amendment. Included in subd. (b) (2). "toll-free telephone number of a service and repair facility central directory outside this state".

1980 Amendment. Added subd. (a)(2) consisting of two paragraphs.

Amendment of this section by § 1.5 of Stats.1980, c. 394, p. —, failed to take effect under the terms of § 3 of that Act.

1981 Amendment. Authorized placement of the statement on the reverse side of the work order or repair invoice and provided for a notice on the face of the work order or repair invoice if the required statement is placed on the reverse side of the work order or repair invoice.

§ 1793.2 Maintenance of service and repair facilities

(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.

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As a means of complying with paragraph shall be permitted to enter into warranty and repair facilities. The warranty schedule of rates to be charged for warranty the rates fixed by such contracts shall subdivision (c) of Section 1793.3. The of Section 1793.3, between the manufacturer, shall not preclude a good-faith induced credit and general overhead component of warranty charges direct to the warranty service contracts authorize cover a period of time in excess of one

(2) In the event of a failure to conform subject to the provisions of Section 1793.3.

(b) Where such service and repair service or repair of the goods is not applicable express warranties, service reasonable time by the manufacturer, the buyer agrees in writing to the contract to conform to the applicable warranties beyond the control of the manufacturer extend this 30-day requirement. Warranty be tendered as soon as possible following the delay.

(c) It shall be the duty of the manufacturer's service and repair facility; and weight, or method of attachment nonconformity, such delivery cannot be unable to effect return of nonconforming goods shall notify the manufacturer or retailer state. Written notice of nonconformity shall constitute return of the goods or repair the goods at the buyer's residence or arrange for transporting the goods to effect return shall be at the expense of transporting nonconforming goods until return of the goods to the buyer.

(d) Should the manufacturer or repair the goods to conform to the number of attempts, the manufacturer the buyer in an amount equivalent amount directly attributable to nonconformity.

(Amended by Stats.1976, c. 416, § 1)

1976 Amendment. Rewrote subd. and required that costs be "reasonable" fifth and sixth sentences of Stats.1976, c. 416, § 1. Substituted in second paragraph of subd. (a) the citation "subdivision (c) of Section 1793.3".

§ 1793.3 Return of nonconforming goods; refund; independent

If the manufacturer of consumer goods sold in this state pursuant to an express warranty the manufacturer's nonconforming goods either subdivision (a), (b), or (c),

Asterisks \* \* \* indicate deletions

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

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

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

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

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

(Amended by Stats.1976, c. 416, p. 1069, § 2; Stats.1978, c. 991, p. 3058, § 7.)

1976 Amendment. Rewrote subd. (a)(1); and required that costs be "reasonable" in the fifth and sixth sentences of subd. (c).

1978 Amendment. Substituted in the second paragraph of subd. (a) the citation to "subdivision (c) of Section 1793.3" for

"Section 1793.3(c)"; substituted in the third sentence of subd. (a)(1) "reduced" for "reduce" and "independent service and repair facility" for "independent"; and inserted in subd. (d) "after a reasonable number of attempts".

§ 1793.3 Return of nonconforming consumer goods; service, repair, replacement or refund; independent repair or service facilities; notice to buyers

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

Asterisks \* \* \* indicate deletions by amendment

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

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

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

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

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

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

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

(e) In the event a buyer is unable to return nonconforming goods to the retailer due to reasons of size and weight, or method of attachment, or method of

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installation, or nature of the nonconformity. . . . Upon receipt of such notice, the retailer shall, at its option, service or repair the goods, or arrange for the goods for service or repair, or arrange for the goods for service or repair, or arrange for the goods for service or repair, or arrange for the goods for service or repair. The reasonable costs of transportation from the manufacturer pursuant to Section 1793.5. . . . The retailer shall constitute return of the goods to the buyer, when incurred by the manufacturer pursuant to Section 1793.5.

(f) The manufacturer of consumer goods for which the manufacturer shall provide written notice to the buyer under subdivision (a), (b), or (c). Amended by Stats.1976, c. 416, p. 1070, § 1.

1976 Amendment. Included application of subd. (c) in the introductory paragraph; inserted subds. (c), (d) and (f); re-lettered subd. (c) as subd. (e); and re-lettered that costs be "reasonable" in three places in subd. (e).

§ 1793.35 Clothing; consumables; draped plied warranty of merchantability

(a) Where the retail sale of . . . by an express warranty and such items do not conform to the warranty, the buyer thereof may return the goods within the period specified in the warranty, which in the express warranty, direct the purchaser of like goods of the same manufacturer to the retailer.

(b) When . . . clothing or consumer goods that they do not conform to the warranty, the buyer thereof may return the goods within the period specified in the warranty, which in the express warranty, direct the purchaser of like goods of the same manufacturer to the retailer. In the event the goods do not conform to the warranty, the retailer shall reimburse the buyer in an amount equal to the purchase price of the goods, at the option of the retailer. Such amounts shall be recoverable by a retailer from the manufacturer pursuant to Section 1793.5.

(c) Where the retail sale of draperies and the sale of such draperies is accorded the retailer's implied warranty of merchantability, the implied warranty of merchantability shall not apply. (Amended by Stats.1978, c. 991, p. 306)

1978 Amendment. Substituted "clothing" for "soft goods" in subds. (a) and (b); added subd. (c).

§ 1793.4 Commencement of service or repair of nonconforming goods within

Where an option is exercised in favor of such service and repair must be completed by the buyer agrees in writing to the express warranties shall be tendered beyond the control of the retail seller within 30-day requirement. Where such an option is exercised, the manufacturer shall, as soon as possible following termination of the option, reimburse the retailer. (Amended by Stats.1978, c. 991, p. 31)

1978 Amendment. Made no change in text.

Asterisks . . . indicate deletions

Installation, or nature of the nonconformity, the buyer shall give notice of the nonconformity to the retailer. Upon receipt of such notice of nonconformity the retailer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service or repair, or arrange for transporting the goods to its place of business. The reasonable costs of transporting the goods shall be at the retailer's expense. The retailer shall be entitled to recover all such reasonable costs of transportation from the manufacturer pursuant to Section 1793.5. The reasonable costs of transporting nonconforming goods after delivery to the retailer until return of the goods to the buyer, when incurred by a retailer, shall be recoverable from the manufacturer pursuant to Section 1793.5. Written notice of nonconformity to the retailer shall constitute return of the goods for the purposes of subdivisions (a) and (b).

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

(Amended by Stats.1976, c. 416, p. 1070, § 3; Stats.1978, c. 991, p. 3062, § 8.)

1976 Amendment. Included application of subd. "(c)" in the introductory paragraph; inserted subds. (c), (d) and (f); re-lettered subd. (c) as subd. (e); and required that costs be "reasonable" in three places in subd. (e).

1978 Amendment. Revised the courses of action prescribed in subds. (b) and (c); substituted in subd. (c) "independent repair or service facility" for "independent serviceman"; and inserted in the first sentence of subd. (d) "willing to accept service or repair under this section."

§ 1793.35 Clothing; consumables; draperies; reimbursement or replacement; Implied warranty of merchantability

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

(b) When \* \* \* clothing or consumables are returned to a retail seller for the reason that they do not conform to an express warranty, the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the express warranty. In the event the manufacturer has not directed replacement in the express warranty, the retailer may replace the nonconforming goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer for the goods, at the option of the retailer. Costs of reimbursement or replacement are recoverable by a retailer from the manufacturer in the manner provided in Section 1793.5.

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

(Amended by Stats.1976, c. 991, p. 3064, § 8.5.)

1978 Amendment. Substituted "clothing" for "soft goods" in subds. (a) and (b) and added subd. (c).

§ 1793.4 Commencement of service and repair within reasonable time; tender of conforming goods within 30 days; extension of time

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

(Amended by Stats.1978, c. 991, p. 3064, § 9.)

1978 Amendment. Made no change in the text.

Asterisks \* \* \* indicate relations by amendment

§ 1793.6 Liability of manufacturer to independent service and repair facility

Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent serviceman for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.

(Added by Stats.1976, c. 416, p. 1072, § 4.)

Library References

Work and Labor § 6.  
C.J.S. Work and Labor § 14 et seq.

§ 1794. Actions by buyers; treble damages; legal and equitable relief; costs and expenses; attorney fees

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

(Amended by Stats.1978, c. 991, p. 3065, § 10.)

1978 Amendment. Expanded the causes of action to include willful violation of the implied or express warranty or service contract; provided for the allowance of costs and expenses; and substituted the provision of "attorney's fees based on actual time expended" for "reasonable attorney fees".

Law Review Commentaries

Mass contracts: Lawful (fraud in California). W. David Slavson (1974) 48 So. Cal. L.R. 1.  
Products liability: Recovery of economic loss. (1977) 13 C.W.L.R. 297.

§ 1794.1 Actions by retailer and independent serviceman

(a) Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

(b) Any independent serviceman of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

(Amended by Stats.1976, c. 416, p. 1072, § 5.)

1978 Amendment. Added subd. (b).

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## § 1794.2 Triple damages in actions by buyers; exceptions

The provision of Section 1784 authorizing the recovery of three times the amount of the buyer's actual damages shall not apply to either of the following:

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

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

(Added by Stats.1979, c. 1023, p. 3496, § 6.)

1979 Legislation.  
Former § 1794.2 was repealed by Stats.  
1979, c. 1023, p. 3496, § 6.

Derivation: Former § 1794.2, added by  
Stats.1970, c. 1333, p. 2463, §§ 1, 3, amended  
by Stats.1971, c. 1523, p. 3007, § 14.

Library References  
Sales § 142(1).  
C.J.S. Sales § 374 et seq.

## § 1785.1 Systems to heat, cool or condition air; equipment or component; application of chapter

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

(Amended by Stats.1978, c. 901, p. 3065, § 11.)

1978 Amendment. Deleted a general exemption from this chapter for any equipment or part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system becomes a fixed part of a structure.

## § 1785.5 Used goods; obligation of distributor or retail seller; maintenance of service and repair facilities; duration of warranties

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

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

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

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

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

(Amended by Stats.1974, c. 169, p. 325, § 1; Stats.1978, c. 901, p. 3065, § 12.)

Section 2 of Stats.1974, c. 169, p. 326, provided: "The amendment of Section 1795.5 of the Civil Code made by Section 1 of this act does not constitute a change in, but is declaratory of, the existing law."

1974 Amendment. Added subd. (d).

1978 Amendment. Substituted in the first paragraph "in a sale in which an express warranty is given" for "if a distribu-

tor or retail seller of used goods makes express warranties with respect to used goods that are sold in this state \* \* \*"; deleted in subd. (a) "or cause to be maintained" following "maintain".

Law Review Commentaries  
Implied Warranties on used cars. (1975)  
\* U.S.F.L.Rev. 639.

Asterisks \* \* \* indicate deletions by amendment

## § 1795.6

### CIVIL CODE

#### § 1795.6 Tolling or expiration of warranty period during time of repairs

(a) Every warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or subdivision (c) of Section 1793.3, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.

(b) Notwithstanding the date or conditions set for the expiration of the warranty period, such warranty period shall not be deemed expired if either or both of the following situations occur: (1) after the buyer has satisfied the requirements of subdivision (a), the warranty repairs or service has not been performed due to delays caused by circumstances beyond the control of the buyer or (2) the warranty repairs or service performed upon the nonconforming goods did not remedy the nonconformity for which such repairs or service was performed and the buyer notified the manufacturer or seller of this failure within 60 days after the repairs or service was completed. When the warranty repairs or service has been performed so as to remedy the nonconformity, the warranty period shall expire in accordance with its terms, including any extension to the warranty period for warranty repairs or service.

(c) For purposes of this section only, "manufacturer" includes the manufacturer's service or repair facility.

(d) Every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer.

(Added by Stats.1974, c. 844, p. 1809, § 1, operative July 1, 1975. Amended by Stats.1980, c. 394, p. —, § 2.)

Section 3 of Stats.1974, c. 844, p. 1810, provides: "This act shall become operative July 1, 1975."

1980 Amendment. Redesignated subds. (b) and (c) as (c) and (d); added subd. (b).

Library references  
Sales ☞ 380.  
C.J.S. Sales § 470 et seq.

#### § 1795.7 Liability of manufacturer; extension upon tolling of warranty period

Whenever a warranty, express or implied, is tolled pursuant to Section 1795.6 as a result of repairs or service performed by any retail seller, the warranty shall be extended with regard to the liability of the manufacturer to a retail seller pursuant to law. In such event, the manufacturer shall be liable in accordance with the provisions of Section 1793.5 for the period that an express warranty has been extended by virtue of Section 1795.6 to every retail seller who incurs obligations in giving effect to such express warranty. The manufacturer shall also be liable to every retail seller for the period that an implied warranty has been extended by virtue of Section 1795.6, in the same manner as he would be liable under Section 1793.5 for an express warranty. If a manufacturer provides for warranty repairs and service through its own service and repair facilities and through independent repair facilities in the state, its exclusive liability pursuant to this section shall be to such facilities.

(Added by Stats.1974, c. 844, p. 1809, § 2, operative July 1, 1975.)

Underline indicates changes or additions by amendment

Library references  
Sales ☞ 380.  
C.J.S. Sales § 470 et seq.

### CHAPTER 2. STANDARDS

Sec.  
1796. Installation of consumer goods  
1796.5 Service or repair to consumer

*Chapter 2 was added*

§ 1796. Installation of consumer goods  
Any individual, partnership, or corporation which engages in the business of selling goods to the buyer to install them in a garage.  
(Added by Stats.1978, c. 991, p. 30)

Library References  
Sales ☞ 150(1).  
C.J.S. Sales §§ 132, 166.

§ 1796.5 Service or repair to consumer  
Any individual, partnership, or corporation which engages in the business of selling goods has a duty to the purchaser in a like manner.

(Added by Stats.1978, c. 991, p. 30)

Library References  
Sales ☞ 150(1).  
C.J.S. Sales §§ 132, 166.

### CHAPTER 3.

Sec.  
1797.5 Notice of warrant; disclosure

Business practices of mobilehome sales which are unlawful acts, acts and Safety Code § 18060.6.

§ 1797.3 Written warranty; contents

The mobilehome warranty form set forth in " \* \* \* a repair warranty," shall be delivered to the buyer at the time the mobilehome sale is signed, and shall contain:

(a) That the mobilehome is a product of workmanship.

(b) That the manufacturer or seller shall be liable for materials or workmanship which are defective at the time of delivery of the mobilehome to the buyer. The manufacturer or seller shall give written notice of such defects to the buyer at the time of delivery, and such address not later than 10 days after the date of delivery.

(c) That the manufacturer or seller shall be liable to the buyer for the fulfillment of the warranty. The manufacturer or seller shall notify either one or both of the following persons of substantial defects:

Asterisks \* \* \* indicate deletion

Library references  
Sales ~~§~~ 380.  
C.J.S. Sales § 470 et seq.

## CHAPTER 2. STANDARDS FOR WARRANTY WORK [NEW]

Sec.

1796. Installation of consumer goods: duty owed to buyers.  
1796.5 Service or repair to consumer goods: duty owed to purchasers.

*Chapter 2 was added by Stats.1978, c. 991, p. 3065, § 13.*

## § 1796. Installation of consumer goods; duty owed to buyers

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

(Added by Stats.1975, c. 891, p. 3065, § 13.)

Library References  
Sales ~~§~~ 150(1).  
C.J.S. Sales §§ 132, 166.

## § 1796.5 Service or repair to consumer goods; duty owed to purchasers

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

(Added by Stats.1978, c. 991, p. 3065, § 13.)

Library References  
Sales ~~§~~ 150(1).  
C.J.S. Sales §§ 132, 166.

## CHAPTER 3. MOBILEHOME WARRANTIES

Sec.

- 1797.5 Notice of warrant: display; posting [New].

Business practices of mobilehome licensees which are unlawful acts, see Health and Safety Code § 18060.5.

## § 1797.3 Written warranty; contents

The mobilehome warranty from the manufacturer or dealer to the buyer shall be set forth in \* \* \* a separate written document entitled "Mobilehome Warranty," shall be delivered to the buyer by the dealer at the time the contract of sale is signed, and shall contain, but is not limited to, the following terms:

(a) That the mobilehome is free from any substantial defects in materials or workmanship.

(b) That the manufacturer or dealer or both shall take appropriate corrective action at the site of the mobilehome in instances of substantial defects in materials or workmanship which become evident within one year from the date of delivery of the mobilehome to the buyer, provided the buyer or his transferee gives written notice of such defects to the manufacturer or dealer at their business address not later than 1 year and 10 days after date of delivery.

(c) That the manufacturer and dealer shall be jointly and severally liable to the buyer for the fulfillment of the terms of warranty, and that the buyer may notify either one or both of the need for appropriate corrective action in instances of substantial defects in materials or workmanship.

Asterisks \* \* \* indicate deletions by amendment

environmental protection, and no ambulance personnel, which fireman, policeman, teacher or other school personnel, ski patrol member, lifeguard, conservation officer, patrolman or special policeman of the department of environmental protection or ambulance personnel has completed a course in first aid offered by the American Red Cross, the American Heart Association, the department of health services or any director of health, as certified by the agency or director of health offering such course, who renders emergency first aid to a person in need thereof, shall be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency care or first aid, which may constitute ordinary negligence. NO PAID OR VOLUNTEER FIREMAN OR POLICEMAN WHO FORCIBLY ENTERS THE RESIDENCE OF ANY PERSON IN ORDER TO RENDER EMERGENCY FIRST AID TO A PERSON WHOM HE REASONABLY BELIEVES TO BE IN NEED THEREOF SHALL BE LIABLE TO SUCH PERSON FOR CIVIL DAMAGES INCURRED AS A RESULT OF SUCH ENTRY. [This] THE immunity PROVIDED IN THIS SUBSECTION does not apply to acts or omissions constituting gross, wilful or wanton negligence.

Approved May 28, 1982.

## AUTOMOBILE WARRANTIES

Substitute House Bill No. 5729

PUBLIC ACT NO. B2-287

### AN ACT CONCERNING AUTOMOBILE WARRANTIES.

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

(NEW) (a) As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of

Additions in text indicated by CAPITALS; deletions by [brackets]

*need*  
←

the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable ~~express warranties~~, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during ~~the term of such express warranties~~ or during the period of one year following the date of original delivery of the motor vehicle to a consumer, ~~whichever is the earlier date~~, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for

*California*

*Alled*

a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

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

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

Approved June 4, 1982.

### ABSENTEE BALLOT—TIME LIMIT FOR VOTING

Substitute House Bill No. 5578

PUBLIC ACT NO. 82-288

#### AN ACT CONCERNING THE TIME LIMIT FOR VOTING BY ABSENTEE BALLOT.

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

Section 1. Section 9-146 of the general statutes, as amended by section 4 of public act 81-424, is repealed and the following is substituted in lieu thereof:

(a) An absentee ballot shall be cast at any election only if: (1) It is mailed by the elector so that it is received by the clerk of the municipality in which he is qualified to vote not later than the close of the polls on the day of such election; (2) it is returned by the elector in person to said clerk by the day before such election OR PRIOR TO THE OPENING OF THE POLLS ON A SPECIAL ELECTION DAY OR PRIMARY DAY; (3) in the case of a presidential ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-158g; or (4) in the case of an overseas ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-159g.

(b) In the case of an elector who cast an absentee ballot because of illness or physical

Additions in text indicated by CAPITALS; deletion by [brackets]

hours after the duck is prepared, since the methods used to prepare the duck inhibit the growth of micro-organisms which can cause food infections or food intoxications.

Nothing in this section shall be construed to supersede any provision of this chapter except the provisions specified in this subdivision.

(b) For the purpose of this section, "Chinese-style roast duck" shall include, but is not limited to, Chinese-style barbeque duck, dry hung duck, and Peking duck.

Chinese-style roast duck means duck which is prepared as follows:

(1) The abdominal cavity is cleaned.

(2) The duck is marinated.

(3) The cavity is closed prior to cooking.

(4) The duck is roasted at a temperature of 350 degrees Fahrenheit or more for at least 60 minutes.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that restaurants which provide whole Chinese-style roast duck may continue to do so without interruption, it is necessary that this act take effect immediately.

#### WARRANTIES—MOTOR VEHICLES—REPAIRS

Assembly Bill No. 1787

#### CHAPTER 363

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

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

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1787, Tanner. Warranties.

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

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

*Comment:*

and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

*Necessary to comply with Federal Magnuson-Moss Warranty Act.*

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

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

*would be very good for Alaskan consumers*

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

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

*Could result in one for each major community*

*None  
Katz  
Barnes  
etc.  
etc. LIBRARY*

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

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement.

symbol ▽ indicates text deletion

Where such delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

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

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

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

to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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

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

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

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

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

(in the state)

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§ 1791.3 OBLIGATIONS IMPOSED BY LAW Div. 3

§ 1791.3 Disclaimer of implied warranties; "as is" or "with all faults" sales

As used in this chapter, a sale "as is" or "with all faults" means that the manufacturer, distributor, and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter.

(Added by Stats.1970, c. 1333, p. 2479, § 1.)

Historical Note

Operative effect of Stats.1970, c. 1333, p. 2453, see Historical Note under § 1790.

Cross References

Exclusion or modification of warranties, see Commercial Code § 2310.

Library References

Sales ⇐ 267.

C.J.S. Sales §§ 310, 317.

Article 3

SALE WARRANTIES

Sec.

- 1792. Necessity of implied warranty of merchantability; exception.
- 1792.1 Goods for particular purpose; implied warranty of fitness by manufacturer.
- 1792.2 Goods for particular purpose; implied warranty of fitness by retailer or distributor.
- 1792.3 Proscription against waiver of implied warranties; exception.
- 1792.4 Written notice to buyer; disclaimer of implied warranties on "as is" or "with all faults" sales.
- 1792.5 Sales on "as is" or "with all faults" basis; effect as to buyers.
- 1793. Right to make express warranties; application or modification of implied warranties.
- 1793.1 Language of express warranties; identification of warrantor; service and repair facilities; identification.
- 1793.2 Maintenance of service and repair facilities.
- 1793.3 Return of nonconforming consumer goods for replacement, service or repair.
- 1793.3<sup>0</sup> Nonconforming soft goods or consumables; return for replacement.
- 1793.4 Commencement of service and repair within reasonable time; tender of conforming goods within 30 days; extension of time.
- 1793.5 Liability of manufacturer to retailer.
- 1794. Action by buyer; triple damages.
- 1794.1 Action by retailer; triple damages.
- 1794.2 Law governing; triple damages.
- 1794.3 Defect or nonconformity caused by unauthorized or unreasonable use; inapplicability of chapter.

## Sec.

- 1794.4 Service contract; contents.  
 1794.5 Suggestions of methods of service and repair by manufacturer.  
 1795. Liability of warrantor other than manufacturers.  
 1795.1 Component parts of heating or air-conditioning systems; inapplicability of chapter; exception.  
 1795.5 Used goods; obligation of distributor or retail seller; maintenance of service and repair facilities; duration of warranties.  
 1796. Repealed.

*Article 3 was added by Stats.1970, c. 1333, p. 2480, § 1.*

## Historical Note

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

## Library References

Sales  $\hookrightarrow$  246 et seq.

C.J.S. Sales §§ 301, 302.

### § 1792. Necessity of implied warranty of merchantability; exception

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

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1523, p. 3003, § 4, operative Jan. 1, 1972.)

## Historical Note

The 1971 amendment rewrote the section which, as originally added, read as follows: "Unless disclaimed in the manner prescribed by this chapter, every sale or consignment of consumer goods in this state by a manufacturer shall be accompanied by an implied warranty that the goods are merchantable."

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Former section 1792, added by Stats.1931, c. 1670, p. 2267, § 1, as part of the Uniform Sales Act, was repealed by Stats.1963, c. 819, p. 1697, § 2, eff. Jan. 1, 1965. See, now, Commercial Code § 1106.

## Cross References

Implied warranty of merchantability, see Commercial Code § 2314.

## Library References

Sales  $\hookrightarrow$  272.

C.J.S. Sales § 327.

### § 1792.1 Goods for particular purpose; implied warranty of fitness by manufacturer

Every sale or consignment for sale of consumer goods that are sold at retail in this state by a manufacturer who has reason to know at the time of the retail sale that the goods are required for a partic-

§ 1792.1 OBLIGATIONS IMPOSED BY LAW

Div. 3

ular purpose and that the buyer is relying on the manufacturer's skill or judgment to select or furnish suitable goods shall be accompanied by such manufacturer's implied warranty of fitness.

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1523, p. 3003, § 5, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment inserted the words "for sale" and "that are sold at retail"; substituted the words "retail sale" for "sale or consignment"; and substituted the words "such manufacturer's" for "an".

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Cross References

Implied warranty of fitness for particular purpose, see Commercial Code § 2315.

Library References

Sales § 273(2).

C.J.S. Sales §§ 325, 330.

§ 1792.2 Goods for particular purpose; implied warranty of fitness by retailer or distributor

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

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1523, p. 3003, § 6, operative Jan. 1, 1972.)

Historical Note

As added in 1970, this section read: "Every sale or consignment of consumer goods in this state made through a retailer or distributor who has reason to know at the time of sale or consignment that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable goods, shall, in lieu of the warranty of the manufacturer under

Section 1792.1, be accompanied by an implied warranty that the goods are fit for that purpose."

The 1971 amendment rewrote the section.

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Cross References

Implied warranty of fitness for particular purpose, see Commercial Code § 2315.

Library References

Sales § 273(3).

C.J.S. Sales §§ 325, 330.

Div. 3

PL. 4

CONSUMER WARRANTIES

§ 1792.4

§ 1792.3 Proscription against waiver of implied warranties; exception

No implied warranty of merchantability and, where applicable, no implied warranty of fitness shall be waived, except in the case of a sale of consumer goods on an "as is" or "with all faults" basis where the provisions of this chapter affecting "as is" or "with all faults" sales are strictly complied with.

(Added by Stats.1970, c. 1333, p. 2480, § 2.)

Historical Note

Operative effect of Stats.1970, c. 1333, p. 2480, see Historical Note under § 1790.

Library References

Sales ⇨267.

C.J.S. Sales §§ 316, 317.

§ 1792.4 Written notice to buyer; disclaimer of implied warranties on "as is" or "with all faults" sales

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

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

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

(3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.

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

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1523, p. 3003, § 6.5, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment substituted the words "goods, governed by the provisions of this chapter" for "consumer goods" in subd. (a).

Operative effect of Stats.1970, c. 1333, p. 2480, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Stats.1971, c. 1523, p. 3003, contained two sections numbered 6.5, the first of which provided for the amendment of section 1792.4 and the second of which provided for the amendment of section 1792.5.

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Cross References

Exclusion or modification of warranties, see Commercial Code § 2316.

Library References

Sales ⇨ 267.

C.J.S. Sales §§ 316, 317.

§ 1792.5 Sales on "as is" or "with all faults" basis; effect as to buyers

Every sale of goods that are governed by the provisions of this chapter, on an "as is" or "with all faults" basis, made in compliance with the provisions of this chapter, shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness.

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1623, p. 3003, § 6.5, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment substituted "goods that are governed by the provisions of this chapter" for "consumer goods."

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Stats.1971, c. 1523, p. 3003, contained two sections numbered 6.5, the first of which provided for the amendment of section 1792.4 and the second of which provided for the amendment of section 1792.5.

Cross References

Exclusion or modification of warranties, see Commercial Code § 2316.

Library References

Sales ⇨ 267.

C.J.S. Sales §§ 316, 317.

§ 1793. Right to make express warranties; application or modification of implied warranties

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

(Added by Stats.1970, c. 1333, p. 2480, § 1. Amended by Stats.1971, c. 1523, p. 3004, § 7, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment rewrote the second sentence, which, as originally added, read as follows: "However, a manufacturer, distributor or retailer, may not, by such express warranties, limit the application of

or modify the implied warranties guaranteed by this chapter to the sale of consumer goods."

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

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Operative effect of 1971 amendment, see Historical Note under § 1791.  
Former section 1793, added by Stats.1951, c. 1079, p. 2257, § 1, as part of the Uniform

Sales Act, was repealed by Stats.1963, c. 519, p. 1927, § 2, eff. Jan. 1, 1965. See, now, Commercial Code § 1103.

Cross References

Exclusion or modification of warranties, see Commercial Code § 2310.

Library References

Sales § 253.

C.J.S. Sales § 303.

§ 1793.1 Language of express warranties; identification of warrantor; service and repair facilities; identification

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

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

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

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

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

(Added by Stats.1970, c. 1333, p. 2481, § 1. Amended by Stats.1971, c. 1523, p. 3004, § 8, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment designated the original section as subd. (a) and added subd. (b).

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Cross References

Enforceability of warranty without return of proof of purchase form, see Commercial Code §§ 2500, 2501.

Express warranties, see Commercial Code § 2313.

§ 1793.1 OBLIGATIONS IMPOSED BY LAW

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Library References

Sales § 260.

C.J.S. Sales § 307 et seq.

§ 1793.2 Maintenance of service and repair facilities

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

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

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

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

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

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable express warranties, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid

by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(Added by Stats.1970, c. 1333, p. 2481, § 1. Amended by Stats.1971, c. 1523, p. 3004, § 9, operative Jan. 1, 1972.)

Historical Note

As added in 1970, this section read: "(a) Every manufacturer of consumer goods which are sold in this state and for which there exists an express warranty: (1) shall maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of such warranties, or (2) shall be subject to the provisions of Section 1793.5.

by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, delivery of merchantable goods shall be made as soon as possible following termination of the condition giving rise to the delay.

"(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the applicable warranties, service and repair shall be commenced within a reasonable time following receipt of the goods by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Delay caused

"(c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect."

The 1971 amendment rewrote the section. Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Library References

Rules 256.

C.J.S. Sales §§ 201, 210, 211, 215.

§ 1793.3 Return of nonconforming consumer goods for replacement, service or repair

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

(a) Return the nonconforming consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller. If the retail seller is unable to replace the nonconforming goods or is unable to service or repair the goods so as to effect conformity with applicable express warranties, such retail seller shall reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the nonconformity.

(b) Return the nonconforming consumer goods to any retail seller, within this state, of like goods of the same manufacturer for re-

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placement, or for service or repair. Replacement, service, or repair shall be at the option of the retail seller.

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

(Added by Stats.1970, c. 1333, p. 2481, § 1. Amended by Stats.1971, c. 1523, p. 3005, § 10, operative Jan. 1, 1972.)

Historical Note

As added in 1970, this section read:

"If the manufacturer making express warranties does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

"(a) Return the defective consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller. If the retail seller is unable to replace the defective article with merchantable goods or is unable to effect the service or repair of the goods in accordance with the terms and conditions

of the warranty, the retail seller shall reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect.

"(b) Return the defective article to any retail seller, within this state, of like goods of the same manufacturer for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller."

The 1971 amendment rewrote the section.

Operative effect of Stats.1970, c. 1333, p. 2481, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Cross References

Buyer's damages for breach in regard to accepted goods, see Commercial Code § 2714.

Library References

Sales ⇨ 266, 267(2).

C.J.S. Sales §§ 201, 310-312.

§ 1793.35 Nonconforming soft goods or consumables; return for replacement

(a) Where the retail sale of soft goods or consumables is accompanied by an express warranty and such items do not conform with

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the terms of the express warranty, the buyer thereof may return the goods within 30 days of purchase or the period specified in the warranty, whichever is greater. The manufacturer may, in the express warranty, direct the purchaser to return nonconforming goods to a retail seller of like goods of the same manufacturer for replacement.

(b) When soft goods or consumables are returned to a retail seller for the reason that they do not conform to an express warranty, the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the express warranty. In the event the manufacturer has not directed replacement in the express warranty, the retailer may replace the nonconforming goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer for the goods, at the option of the retailer. Costs of reimbursement or replacement are recoverable by a retailer from the manufacturer in the manner provided in Section 1793.5.

(Added by Stats.1971, c. 1523, p. 3006, § 10.5, operative Jan. 1, 1972.)

Historical Note

Operative effect of 1971 addition, see Historical Note under § 1791.

Library References

Sales § 236.

C.J.S. Sales §§ 201, 310, 341, 343.

§ 1793.4 Commencement of service and repair within reasonable time; tender of conforming goods within 30 days; extension of time

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

(Added by Stats.1970, c. 1333, p. 2482, § 1. Amended by Stats.1971, c. 1523, p. 3006, § 11, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment substituted the words "goods conforming to the applicable express warranties shall be tendered" for "(the goods must be returned in merchantable condition" in the first sentence; made the word "representatives" singular in the second sentence; inserted the word "a" and substituted the words "conforming

goods shall be tendered" for "delivery of merchantable goods shall be made" in the last sentence.

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

§ 1793.4 OBLIGATIONS IMPOSED BY LAW

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Library References

Sales ☞ 266.

C.J.S. Sales §§ 201, 310, 311, 313.

§ 1793.5 Liability of manufacturer to retailer

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

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

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

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

(Added by Stats.1970, c. 1333, p. 2482, § 1. Amended by Stats.1971, c. 1523, p. 3006, § 12, operative Jan. 1, 1972.)

Historical Note

The 1971 amendment inserted the words "and cost of transporting the goods, if such costs are incurred" in subds. (a) and (b).

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Cross References

Used goods, application of this section, see § 1793.5.

Library References

Sales ☞ 142.

C.J.S. Sales § 374 et seq.

§ 1794. Action by buyer; triple damages

Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages, and

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

## (b) Reasonable attorney fees may be awarded.

(Added by Stats.1970, c. 1333, p. 2482, § 1. Amended by Stats.1971, c. 1523, p. 3007, § 13, operative Jan. 1, 1972.)

## Historical Note

The 1971 amendment substituted the word "and" for a period at the end of the introductory paragraph; redesignated the second sentence as subds. (a) and (b); substituted the word "and" for "plus"; and added the words "may be awarded" at the end of the section.

Operative effect of Stats.1970, c. 1333, p. 2482, see Historical Note under § 1790.

Operative effect of 1971 amendment, see Historical Note under § 1791.

Former section 1791 added by Stats.1951, c. 1070, p. 2257, § 1, as part of the Uniform Sales Act, was repealed by Stats.1965, c. 519, p. 1997, § 2, eff. Jan. 1, 1965. See, now, Commercial Code § 1102.

## Cross References

Attorney's fees and costs, award, see § 1717.

Automobile conditional sale contract, attorney's fees, see § 2053.1.

Buyer's damages for breach in regard to accepted goods, see Commercial Code § 2714. Credit card holder, award of attorney's fees against issuer or retailer, see §§ 1747.50, 1747.60, 1747.70.

Damages, generally, see §§ 3274, 3281 et seq.

Swimming pool construction contracts, award of attorney's fees see § 1732.

## Library References

Sales 425 et seq., 442.

C.J.S. Sales 11: 319 et seq., 371 et seq.

## § 1794.1 Action by retailer; triple damages

Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

(Added by Stats.1970, c. 1333, p. 2482, § 1.)

## Historical Note

Operative effect of Stats.1970, c. 1333, p. 2482, see Historical Note under § 1790.

## Cross References

Attorney's fees and costs, award, see § 1717.

Automobile conditional sales contract, attorney's fees, see § 2053.1.

Credit card holder, award of attorney's fees against issuer or retailer, see §§ 1747.50, 1747.60, 1747.70.

Damages, generally, see §§ 3274, 3281 et seq.

Swimming pool construction contracts, award of attorney's fees see § 1732.

## § 1794.2 Law governing; triple damages

(a) Subdivision (a) of Section 1794 shall not apply to a cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure or pursuant to Section 1781 of this code.

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

(Added by Stats.1970, c. 1333, p. 2483, §§ 1, 3. Amended by Stats.1971, c. 1523, p. 3007, § 14, operative Jan. 1, 1972.)

**Historical Note**

The text of section 1794.2, added by Stats.1970, c. 1333, p. 2483, § 1, operative until March 1, 1971, read as follows: "The triple damages provisions of this chapter shall not apply to a cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure."

The text of section 1794.2, added by Stats. 1970, c. 1333, p. 2483, § 3, operative March 1, 1971, contained identical language, but the words "or pursuant to Section 1780 or 1781 of this code" appeared at the end of the section.

The 1971 amendment designated the 1970 addition as subd. (a) and therein substituted "Subdivision (a) of Section 1794" for "The triple damages provisions of this chapter" and deleted the reference to section 1780; and it added subd. (b).

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of the 1971 amendment, see Historical Note under § 1791.

**§ 1794.3**

**Defect or nonconformity caused by unauthorized or unreasonable use; inapplicability of chapter**

The provisions of this chapter shall not apply to any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the goods following sale.

(Added by Stats.1970, c. 1333, p. 2482, § 1. Amended by Stats.1971, c. 1523, p. 3007, § 15, operative Jan. 1, 1972.)

**Historical Note**

The 1971 amendment inserted the words "or nonconformity".

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of the 1971 amendment, see Historical Note under § 1791.

**§ 1794.4**

**Service contract; contents**

Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if such contract fully and conspicuously discloses in simple and readily understood language the terms and conditions of such contract.

(Added by Stats.1970, c. 1333, p. 2482, § 1. Amended by Stats.1971, c. 1523, p. 3007, § 16, operative Jan. 1, 1972.)

**Historical Note**

The 1971 amendment added the words "of such contract" at the end of the section.

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Operative effect of the 1971 amendment, see Historical Note under § 1791.

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§ 1794.5 Suggestions of methods of service and repair by manufacturer

The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter.

(Added by Stats.1970, c. 1333, p. 2483, § 1.)

Historical Note

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

§ 1795. Liability of warrantors other than manufacturers

If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter.

(Added by Stats.1970, c. 1333, p. 2483, § 1.)

Historical Note

Operative effect of Stats.1970, c. 1333, p. 2483, see Historical Note under § 1790.

Sales Act, was repealed by Stats.1963, c. 819, p. 1997, § 2, eff. Jan. 1, 1965. See, now, Commercial Code § 2107.

Former section 1795, added by Stats.1951, c. 1970, p. 2357, § 1, as part of the Uniform

§ 1795.1 Component parts of heating or air-conditioning systems; inapplicability of chapter; exception

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

(Added by Stats.1971, c. 1523, p. 3007, § 16.5, operative Jan. 1, 1972.)

Historical Note

Operative effect of the 1971 addition, see Historical Note under § 1791.

Library References

Sales § 266.

C.J.S. Sales § 321 et seq.

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§ 1795.5 Used goods; obligation of distributor or retail seller; maintenance of service and repair facilities; duration of warranties

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

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

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

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

(Added by Stats.1971, c. 1623, p. 3008, § 17, operative Jan. 1, 1972.)

Historical Note

Operative effect of the 1971 addition, see Historical Note under § 1791.

Cross References

Statute of limitations in contracts for sale, see Commercial Code § 2725.

Library References

Ballou C-279.

C.J.S. Sales § 313 et seq.

§ 1796. Repealed by Stats.1963, c. 819, p. 1997, § 2, eff. Jan. 1, 1965

Historical Note

The repealed section was added by Stats.1931, c. 1070, p. 2257, § 1, as part of the Uniform Sales Act. The repeal was incidental to the enactment of the Commercial Code. See Historical Note and Disposition Table preceding section 1721.

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**FAIR PRACTICES IN AUTOMOTIVE PRODUCTS ACT**

**-> PATRICK**

**HEARINGS**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

**S. 2300**

TO ESTABLISH DOMESTIC CONTENT REQUIREMENTS FOR MOTOR  
VEHICLES SOLD IN THE UNITED STATES, AND FOR OTHER PURPOSES

DECEMBER 16 AND 17, 1982

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