

AMENDED IN ASSEMBLY MAY 15, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 623**

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**Introduced by Assembly Member Runner**

February 22, 2001

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An act to amend Section ~~1793.3~~ 1793.5 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 623, as amended, Runner. Consumer warranties: return of nonconforming goods.

Existing law, the Song-Beverly Consumer Warranty Act, provides a comprehensive set of procedures for the enforcement of express and implied warranties on consumer goods, as defined. Existing law establishes a process for buyers and retailers to follow when a manufacturer of expressly warranted consumer goods does not provide service and repair facilities within the state, or does not make available sufficient authorized service and repair facilities, service literature, and replacement parts. One of the options available to a buyer is to return the nonconforming goods to the retail seller. Existing law provides that if a buyer is unable to return nonconforming goods to the retailer due to reasons of size and weight, method of attachment, method of installation, or the nature of the nonconformity, the buyer must give notice of the nonconformity to the retailer. Existing law requires the retailer, upon the receipt of the notice, to 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, at the retailer's option. Existing law provides that the costs of transporting the

~~goods are the retailer's responsibility, and that the retailer may recover these costs from the manufacturer. Existing law additionally allows the retailer, among other things, to recover transportation costs incurred prior to the return of the goods to the buyer, an amount equal to replacement costs, if the goods are replaced and, if goods are serviced and repaired, the actual and reasonable costs that would have been charged consumers without warranties, plus a reasonable profit provides that a manufacturer that makes express warranties and that fails to provide specified service and repair facilities within this state is liable for certain costs to a retail seller of the manufacturer's goods who incurs obligations in fulfilling the express warranties that accompany that manufacturer's consumer goods.~~

~~This bill would amend the provisions described above addressing a retailer's responsibilities when a buyer is unable to return nonconforming goods to the retailer for the above-specified reasons. This bill would require the retailer to notify the manufacturer of the nonconforming goods by first-class mail of the buyer's notice of nonconformity, and if the manufacturer does not respond within 7 days, to take specified actions. This bill would permit the retailer to replace the nonconforming goods with goods that are identical or reasonably equivalent. This bill would also entitle the retailer to payment from the manufacturer for a variety of specified costs incurred in servicing, repairing, and replacing nonconforming goods, and would entitle the retailer to add a 25% service charge on the total of these costs. The bill would expressly authorize a retailer to bring an action for recovery of these payments against a manufacturer failing or refusing to make them, as well as for attorney's fees and costs, and would prohibit a manufacturer from requiring a retailer to bring an action outside of a court of this state, and from requiring arbitration of a retailer's claim prohibit a flooring industry manufacturer from requiring a flooring industry retail seller to bring an action in any court other than a court of this state when the retail seller claims payments following that manufacturer's failure to provide specified service and repair facilities within this state, as described above. The bill would make void and unenforceable any waiver of the provisions described above regarding buyer and retailer obligations this prohibition.~~

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



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

1 ~~SECTION 1. Section 1793.3 of the Civil Code is amended to~~  
2 *SECTION 1. Section 1793.5 of the Civil Code is amended to*  
3 *read:*

4 1793.5. (a) Every manufacturer making express warranties  
5 who does not provide service and repair facilities within this state  
6 pursuant to subdivision (a) of Section 1793.2 shall be liable as  
7 prescribed in this section to every retail seller of ~~such the~~  
8 manufacturer's goods who incurs obligations in giving effect to  
9 the express warranties that accompany ~~such the~~ manufacturer's  
10 consumer goods. The amount of ~~such the~~ liability shall be  
11 determined as follows:

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

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

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

28 (b) *A flooring industry manufacturer may not require a flooring*  
29 *industry retail seller claiming payments required under this*  
30 *section to bring an action in any court other than a court of this*  
31 *state. Any waiver of the provisions of this subdivision is void and*  
32 *may not be enforced.*



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**All matter omitted in this version of the bill appears in the bill as introduced in the Assembly, February 22, 2001 (JR 11)**

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