

ASSEMBLY BILL

No. 2526

Introduced by Assembly Member Achadjian

February 19, 2016

An act to amend Section 1793.22 of the Civil Code, relating to consumer protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2526, as introduced, Achadjian. Consumer protection.

Existing law, the Tanner Consumer Protection Act, establishes a presumption that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery or 18,000 miles on the odometer, whichever occurs first, one or more conditions occur.

This bill would make nonsubstantive changes to these provisions.

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 1793.22 of the Civil Code is amended
2 to read:
3 1793.22. (a) This section shall be ~~known~~ *known*, and may be
4 cited ~~as~~ *as*, the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of attempts
6 have been made to conform a new motor vehicle to the applicable
7 express warranties if, within 18 months from delivery to the buyer
8 or 18,000 miles on the odometer of the vehicle, whichever occurs
9 first, one or more of the following ~~occurs~~: *conditions occur*:

1 (1) The same nonconformity results in a condition that is likely
2 to cause death or serious bodily injury if the vehicle is driven and
3 the nonconformity has been subject to repair two or more times
4 by the manufacturer or its agents, and the buyer or lessee has at
5 least once directly notified the manufacturer of the need for the
6 repair of the nonconformity.

7 (2) The same nonconformity has been subject to repair four or
8 more times by the manufacturer or its agents and the buyer has at
9 least once directly notified the manufacturer of the need for the
10 repair of the nonconformity.

11 (3) The vehicle is out of service by reason of repair of
12 nonconformities by the manufacturer or its agents for a cumulative
13 total of more than 30 calendar days since delivery of the vehicle
14 to the buyer. The 30-day limit shall be extended only if repairs
15 cannot be performed due to conditions beyond the control of the
16 manufacturer or its agents. The buyer shall be required to directly
17 notify the manufacturer pursuant to paragraphs (1) and (2) only if
18 the manufacturer has clearly and conspicuously disclosed to the
19 buyer, with the warranty or the owner's manual, the provisions of
20 this section and that of subdivision (d) of Section 1793.2, including
21 the requirement that the buyer must notify the manufacturer directly
22 pursuant to paragraphs (1) and (2). The notification, if required,
23 shall be sent to the address, if any, specified clearly and
24 conspicuously by the manufacturer in the warranty or owner's
25 manual. This presumption shall be a rebuttable presumption
26 affecting the burden of proof, and it may be asserted by the buyer
27 in any civil action, including an action in small claims court, or
28 other formal or informal proceeding.

29 (c) If a qualified third-party dispute resolution process exists,
30 and the buyer receives timely notification in writing of the
31 availability of that qualified third-party dispute resolution process
32 with a description of its operation and effect, the presumption in
33 subdivision (b) may not be asserted by the buyer until after the
34 buyer has initially resorted to the qualified third-party dispute
35 resolution process as required in subdivision (d). Notification of
36 the availability of the qualified third-party dispute resolution
37 process is not timely if the buyer suffers any prejudice resulting
38 from any delay in giving the notification. If a qualified third-party
39 dispute resolution process does not exist, or if the buyer is
40 dissatisfied with that third-party decision, or if the manufacturer

1 or its agent neglects to promptly fulfill the terms of the qualified
2 third-party dispute resolution process decision after the decision
3 is accepted by the buyer, the buyer may assert the presumption
4 provided in subdivision (b) in an action to enforce the buyer's
5 rights under subdivision (d) of Section 1793.2. The findings and
6 decision of a qualified third-party dispute resolution process shall
7 be admissible in evidence in the action without further foundation.
8 Any period of limitation of actions under any federal or California
9 laws with respect to any person shall be extended for a period
10 equal to the number of days between the date a complaint is filed
11 with a third-party dispute resolution process and the date of its
12 decision or the date before which the manufacturer or its agent is
13 required by the decision to fulfill its terms if the decision is
14 accepted by the buyer, whichever occurs later.

15 (d) A qualified third-party dispute resolution process shall be
16 one that does all of the following:

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

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

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

26 (4) Provides arbitrators who are assigned to decide disputes
27 with copies of, and instruction in, the provisions of the Federal
28 Trade Commission's regulations in Part 703 of Title 16 of the
29 Code of Federal Regulations as those regulations read on January
30 1, 1987, Division 2 (commencing with Section 2101) of the
31 Commercial Code, and this chapter.

32 (5) Requires the manufacturer, when the process orders, under
33 the terms of this chapter, either that the nonconforming motor
34 vehicle be replaced if the buyer consents to this remedy or that
35 restitution be made to the buyer, to replace the motor vehicle or
36 make restitution in accordance with paragraph (2) of subdivision
37 (d) of Section 1793.2.

38 (6) Provides, at the request of the arbitrator or a majority of the
39 arbitration panel, for an inspection and written report on the
40 condition of a nonconforming motor vehicle, at no cost to the

1 buyer, by an automobile expert who is independent of the
2 manufacturer.

3 (7) Takes into account, in rendering decisions, all legal and
4 equitable factors, including, but not limited to, the written warranty,
5 the rights and remedies conferred in regulations of the Federal
6 Trade Commission contained in Part 703 of Title 16 of the Code
7 of Federal Regulations as those regulations read on January 1,
8 1987, Division 2 (commencing with Section 2101) of the
9 Commercial Code, this chapter, and any other equitable
10 considerations appropriate in the circumstances. Nothing in this
11 chapter requires that, to be certified as a qualified third-party
12 dispute resolution process pursuant to this section, decisions of
13 the process must consider or provide remedies in the form of
14 awards of punitive damages or multiple damages, under subdivision
15 (c) of Section 1794, or of attorneys' fees under subdivision (d) of
16 Section 1794, or of consequential damages other than as provided
17 in subdivisions (a) and (b) of Section 1794, including, but not
18 limited to, reasonable repair, towing, and rental car costs actually
19 incurred by the buyer.

20 (8) Requires that no arbitrator deciding a dispute may be a party
21 to the dispute and that no other person, including an employee,
22 agent, or dealer for the manufacturer, may be allowed to participate
23 substantively in the merits of any dispute with the arbitrator unless
24 the buyer is allowed to participate also. Nothing in this subdivision
25 prohibits any member of an arbitration board from deciding a
26 dispute.

27 (9) Obtains and maintains certification by the Department of
28 Consumer Affairs pursuant to Chapter 9 (commencing with Section
29 472) of Division 1 of the Business and Professions Code.

30 (e) For the purposes of subdivision (d) of Section 1793.2 and
31 this section, the following terms have the following meanings:

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

35 (2) "New motor vehicle" means a new motor vehicle that is
36 bought or used primarily for personal, family, or household
37 purposes. "New motor vehicle" also means a new motor vehicle
38 with a gross vehicle weight under 10,000 pounds that is bought or
39 used primarily for business purposes by a person, including a
40 partnership, limited liability company, corporation, association,

1 or any other legal entity, to which not more than five motor
2 vehicles are registered in this state. “New motor vehicle” includes
3 the chassis, chassis cab, and that portion of a motor home devoted
4 to its propulsion, but does not include any portion designed, used,
5 or maintained primarily for human habitation, a dealer-owned
6 vehicle and a “demonstrator” or other motor vehicle sold with a
7 manufacturer’s new car warranty but does not include a motorcycle
8 or a motor vehicle which is not registered under the Vehicle Code
9 because it is to be operated or used exclusively off the highways.
10 A demonstrator is a vehicle assigned by a dealer for the purpose
11 of demonstrating qualities and characteristics common to vehicles
12 of the same or similar model and type.

13 (3) “Motor home” means a vehicular unit built on, or
14 permanently attached to, a self-propelled motor vehicle chassis,
15 chassis cab, or van, which becomes an integral part of the
16 completed vehicle, designed for human habitation for recreational
17 or emergency occupancy.

18 (f) (1) Except as provided in paragraph (2), no person shall sell,
19 either at wholesale or retail, lease, or transfer a motor vehicle
20 transferred by a buyer or lessee to a manufacturer pursuant to
21 paragraph (2) of subdivision (d) of Section 1793.2 or a similar
22 statute of any other state, unless the nature of the nonconformity
23 experienced by the original buyer or lessee is clearly and
24 conspicuously disclosed to the prospective buyer, lessee, or
25 transferee, the nonconformity is corrected, and the manufacturer
26 warrants to the new buyer, lessee, or transferee in writing for a
27 period of one year that the motor vehicle is free of that
28 nonconformity.

29 (2) Except for the requirement that the nature of the
30 nonconformity be disclosed to the transferee, paragraph (1) does
31 not apply to the transfer of a motor vehicle to an educational
32 institution if the purpose of the transfer is to make the motor vehicle
33 available for use in automotive repair courses.

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