

AMENDED IN ASSEMBLY APRIL 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1383

Introduced by Assembly Member Speier

February 24, 1995

~~An act to amend Sections 472, 472.1, 472.2, 472.3, 472.4, and 472.5 of, and to add Sections 472.6 and 472.7 to, the Business and Professions Code, and to amend Sections 1793.22 and 1794 of, and to add Section 1793.23 to, the Civil Code, relating to An act to repeal Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code, and to amend Section 1793.22 of the Civil Code, relating to arbitration.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, Speier. Arbitration: motor vehicles.

(1) Existing law provides for the regulation and certification of 3rd-party dispute resolution processes by the Department of Consumer Affairs.

~~This bill would revise and recast repeal these provisions to, among other things, incorporate prescribed regulations and require the department to establish a process for the decertification of these processes, as specified.~~

(2) Existing law provides that, if a manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required to either promptly replace the new motor vehicle or promptly make restitution to the buyer, as specified. The

existing 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 certain conditions are met within one year from delivery to the buyer or 12,000 miles, whichever occurs first. However, it also provides that this presumption may not be asserted until after the buyer has initially resorted to a qualified 3rd-party dispute resolution process where such a process is available, as specified.

This bill would revise the conditions for operation of the presumption, as specified, and would delete the provisions requiring use of a 3rd-party dispute resolution process.

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

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

1 ~~SECTION 1.—Section 472 of the Business and~~
2 SECTION 1. Chapter 9 (commencing with Section
3 472) of Division 1 of the Business and Professions Code is
4 repealed.
5 SEC. 2. Section 1793.22 of the Civil Code is amended
6 to read:
7 1793.22. (a) This section shall be known and may be
8 cited as the Tanner Consumer Protection Act.
9 (b) It shall be presumed that a reasonable number of
10 attempts have been made to conform a new motor
11 vehicle to the applicable express warranties if, within ~~one~~
12 ~~year~~ *two years* from delivery to the buyer or ~~12,000~~ *24,000*
13 miles on the odometer of the vehicle, whichever occurs
14 first, either (1) the same nonconformity has been subject
15 to repair four or more times by the manufacturer or its
16 agents, *the first of these repair attempts has occurred*
17 *within one year from delivery to the buyer;* and the buyer
18 has at least once directly notified the manufacturer of the
19 need for the repair of the nonconformity or (2) the
20 vehicle is out of service by reason of repair of
21 nonconformities by the manufacturer or its agents for a
22 cumulative total of more than 30 calendar days since
23 delivery of the vehicle to the buyer *and the first full day*



1 *out of service has occurred within one year from delivery*
2 *to the buyer.* The 30-day limit shall be extended only if
3 repairs cannot be performed due to conditions beyond
4 the control of the manufacturer or its agents. The buyer
5 shall be required to directly notify the manufacturer
6 pursuant to paragraph (1) only if the manufacturer has
7 clearly and conspicuously disclosed to the buyer, with the
8 warranty or the owner's manual, the provisions of this
9 section and that of subdivision (d) of Section 1793.2,
10 including the requirement that the buyer must notify the
11 manufacturer directly pursuant to paragraph (1). This
12 presumption shall be a rebuttable presumption affecting
13 the burden of proof, and it may be asserted by the buyer
14 in any civil action, including an action in small claims
15 court, or other formal or informal proceeding.

16 ~~(e) If a qualified third-party dispute resolution process~~
17 ~~exists, and the buyer receives timely notification in~~
18 ~~writing of the availability of that qualified third-party~~
19 ~~dispute resolution process with a description of its~~
20 ~~operation and effect, the presumption in subdivision (b)~~
21 ~~may not be asserted by the buyer until after the buyer has~~
22 ~~initially resorted to the qualified third-party dispute~~
23 ~~resolution process as required in subdivision (d).~~
24 ~~Notification of the availability of the qualified third-party~~
25 ~~dispute resolution process is not timely if the buyer suffers~~
26 ~~any prejudice resulting from any delay in giving the~~
27 ~~notification. If a qualified third-party dispute resolution~~
28 ~~process does not exist, or if the buyer is dissatisfied with~~
29 ~~that third-party decision, or if the manufacturer or its~~
30 ~~agent neglects to promptly fulfill the terms of the~~
31 ~~qualified third-party dispute resolution process decision~~
32 ~~after the decision is accepted by the buyer, the buyer may~~
33 ~~assert the presumption provided in subdivision (b) in an~~
34 ~~action to enforce the buyer's rights under subdivision (d)~~
35 ~~of Section 1793.2. The findings and decision of a qualified~~
36 ~~third-party dispute resolution process shall be admissible~~
37 ~~in evidence in the action without further foundation. Any~~
38 ~~period of limitation of actions under any federal or~~
39 ~~California laws with respect to any person shall be~~
40 ~~extended for a period equal to the number of days~~



1 between the date a complaint is filed with a third-party
2 dispute resolution process and the date of its decision or
3 the date before which the manufacturer or its agent is
4 required by the decision to fulfill its terms if the decision
5 is accepted by the buyer, whichever occurs later.

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

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

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

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

19 (4) Provides arbitrators who are assigned to decide
20 disputes with copies of, and instruction in, the provisions
21 of the Federal Trade Commission's regulations in Part 703
22 of Title 16 of the Code of Federal Regulations as those
23 regulations read on January 1, 1987, Division 2
24 (commencing with Section 2101) of the Commercial
25 Code, and this chapter.

26 (5) Requires the manufacturer, when the process
27 orders, under the terms of this chapter, either that the
28 nonconforming motor vehicle be replaced if the buyer
29 consents to this remedy or that restitution be made to the
30 buyer, to replace the motor vehicle or make restitution
31 in accordance with paragraph (2) of subdivision (d) of
32 Section 1793.2.

33 (6) Provides, at the request of the arbitrator or a
34 majority of the arbitration panel, for an inspection and
35 written report on the condition of a nonconforming
36 motor vehicle, at no cost to the buyer, by an automobile
37 expert who is independent of the manufacturer.

38 (7) Takes into account, in rendering decisions, all legal
39 and equitable factors, including, but not limited to, the
40 written warranty, the rights and remedies conferred in



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

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

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

29 ~~(e) —~~

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

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

36 ~~(2) "New motor vehicle" means a new motor vehicle~~
37 ~~which is used or bought for use primarily for personal,~~
38 ~~family, or household purposes. "New motor vehicle"~~
39 ~~includes the chassis, chassis cab, and that portion of a~~
40 ~~motor home devoted to its propulsion, but does not~~



1 include any portion designed, used, or maintained
 2 primarily for human habitation, a dealer-owned vehicle
 3 and a “demonstrator” or other motor vehicle sold with a
 4 manufacturer’s new car warranty but does not include a
 5 motorcycle or a motor vehicle which is not registered
 6 under the Vehicle Code because it is to be operated or
 7 used exclusively off the highways. A “demonstrator” is a
 8 vehicle assigned by a dealer for the purpose of
 9 demonstrating qualities and characteristics common to
 10 vehicles of the same or similar model and type.

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

16 ~~(f)~~

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

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

35 ~~Professions Code is amended to read:~~

36 ~~472. Unless the context requires otherwise, the~~
 37 ~~following definitions govern the construction of this~~
 38 ~~chapter:~~



1 ~~(a) “New motor vehicle” means a new motor vehicle~~
2 ~~as defined in paragraph (2) of subdivision (e) of Section~~
3 ~~1793.22 of the Civil Code.~~

4 ~~(b) “Manufacturer” means a new motor vehicle~~
5 ~~manufacturer, manufacturer branch, distributor, or~~
6 ~~distributor branch required to be licensed pursuant to~~
7 ~~Article 1 (commencing with Section 11700) of Chapter 4~~
8 ~~of Division 5 of the Vehicle Code.~~

9 ~~(c) “Qualified third party dispute resolution process”~~
10 ~~means a third party dispute resolution process which~~
11 ~~operates in compliance with subdivision (d) of Section~~
12 ~~1793.22 of the Civil Code , this chapter, and Chapter 2~~
13 ~~(commencing with Section 3396.1) of Division 33 of Title~~
14 ~~16 of the California Code of Regulations, and which has~~
15 ~~been certified by the department pursuant to this~~
16 ~~chapter.~~

17 ~~SEC. 2. Section 472.1 of the Business and Professions~~
18 ~~Code is amended to read:~~

19 ~~472.1. The department shall establish a program for~~
20 ~~certifying each third party dispute resolution process~~
21 ~~used for the arbitration of disputes pursuant to~~
22 ~~subdivision (c) of Section 1793.22 of the Civil Code. In~~
23 ~~establishing the program, the department shall do all of~~
24 ~~the following:~~

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

27 ~~(b) Establish a set of minimum standards which shall~~
28 ~~be used to determine whether a third party dispute~~
29 ~~resolution process is in compliance with subdivision (d)~~
30 ~~of Section 1793.22 of the Civil Code , this chapter, and~~
31 ~~Chapter 2 (commencing with Section 3396.1) of Division~~
32 ~~33 of Title 16 of the California Code of Regulations.~~

33 ~~(c) Prescribe the information which each~~
34 ~~manufacturer and independent entity that operates a~~
35 ~~third party dispute resolution process pursuant to~~
36 ~~contract with the manufacturer shall provide the~~
37 ~~department in the application for certification. In~~
38 ~~prescribing the information to accompany the~~
39 ~~application for certification, the department shall require~~
40 ~~the manufacturer and the independent entity to provide~~



1 only that information which the department finds is
 2 reasonably necessary to enable the department to
 3 determine whether the third-party dispute resolution
 4 process is in compliance with subdivision (d) of Section
 5 1793.22 of the Civil Code , this chapter, and Chapter 2
 6 (commencing with Section 3396.1) of Division 33 of Title
 7 16 of the California Code of Regulations.

8 (d) Prescribe the information that each qualified
 9 third-party dispute resolution process shall provide the
 10 department, and the time intervals at which the
 11 information shall be required, to enable the department
 12 to determine whether the qualified third-party dispute
 13 resolution process continues to operate in compliance
 14 with subdivision (d) of Section 1793.22 of the Civil Code
 15 ; this chapter, and Chapter 2 (commencing with Section
 16 3396.1) of Division 33 of Title 16 of the California Code of
 17 Regulations.

18 SEC. 3. Section 472.2 of the Business and Professions
 19 Code is amended to read:

20 472.2. (a) (1) Each manufacturer may make
 21 available to buyers and lessees of new motor vehicles a
 22 qualified third-party dispute resolution process for the
 23 resolution of disputes pursuant to subdivision (e) of
 24 Section 1793.22 of the Civil Code. Any manufacturer that
 25 makes a third-party dispute resolution process available
 26 to buyers and lessees of new motor vehicles shall contract
 27 with an independent entity for that purpose as specified
 28 in paragraph (2) of subdivision (d) of Section 1793.22 of
 29 the Civil Code. The manufacturer and that entity shall
 30 then jointly apply to the department for certification. An
 31 independent entity that operates a third-party dispute
 32 resolution process for more than one manufacturer shall
 33 make a separate application for certification for each
 34 manufacturer that uses that entity's third-party dispute
 35 resolution process. The application for certification shall
 36 be accompanied by the information prescribed by the
 37 department, including all of the information required by
 38 paragraph (2).

39 (2) The manufacturer's and entity's applications to the
 40 department for certification shall establish that the entity



1 is independent of the manufacturer by establishing at
2 least all of the following:

3 (A) The manufacturer fully funds the entity's
4 operations and salaries in advance for the entire period
5 covered by the contract between the manufacturer and
6 the entity.

7 (B) The manufacturer and the entity do not share any
8 personnel.

9 (C) The manufacturer does not in any manner base its
10 decision whether to renew its contract with the entity on
11 the outcome of arbitration decisions rendered by the
12 entity.

13 (b) The department shall review the application and
14 accompanying information, and after conducting an
15 onsite inspection, shall determine whether the
16 third-party dispute resolution process is in compliance
17 with subdivision (d) of Section 1793.22 of the Civil Code
18 , this chapter, and Chapter 2 (commencing with Section
19 3396.1) of Division 33 of Title 16 of the California Code of
20 Regulations. If the department determines that the
21 process is in compliance, the department shall certify the
22 process. If the department determines that the process is
23 not in compliance, the department shall deny
24 certification and shall state, in writing, the reasons for
25 denial and the modifications in the operation of the
26 process that are required in order for the process to be
27 certified.

28 (c) The department shall make a final determination
29 whether to certify a third-party dispute resolution
30 process or to deny certification not later than 90 calendar
31 days following the date the department accepts the
32 application for certification as complete.

33 SEC. 4. Section 472.3 of the Business and Professions
34 Code is amended to read:

35 472.3. (a) The department, in accordance with the
36 time intervals prescribed pursuant to subdivision (d) of
37 Section 472.1, but at least once annually, shall review the
38 operation and performance of each qualified third-party
39 dispute resolution process and determine, using the
40 information provided the department as prescribed



~~1 pursuant to subdivision (d) of Section 472.1 and the
2 monitoring and inspection information described in
3 subdivision (e) of Section 472.4, whether the process is
4 operating in compliance with subdivision (d) of Section
5 1793.22 of the Civil Code, this chapter, and Chapter 2
6 (commencing with Section 3396.1) of Division 33 of Title
7 16 of the California Code of Regulations. If the
8 department determines that the process is in compliance,
9 the certification shall remain in effect.~~

~~10 (b) If the department determines that the process is
11 not in compliance with subdivision (d) of Section 1793.22
12 of the Civil Code, this chapter, or Chapter 2
13 (commencing with Section 3396.1) of Division 33 of Title
14 16 of the California Code of Regulations, the department
15 may take one or more of the following actions:~~

~~16 (1) The department may issue to the process a written
17 notice of violation which shall state the nature of the
18 violation. The process shall correct the violation within
19 the period specified by the department, which shall not
20 exceed 60 days, and shall notify the department of the
21 action taken to correct the violation within the period
22 specified for correcting the violation. At any time after
23 issuing the notice, the department may disseminate
24 information to the consumers of this state regarding the
25 nature of the violation, the reasons for the department's
26 determination that the process is not in compliance, and
27 other information that the department deems relevant to
28 consumers' decisions whether to submit disputes to the
29 process.~~

~~30 (2) The department may issue a citation to the process
31 pursuant to a citation issuance system adopted pursuant
32 to Section 472.6.~~

~~33 (3) The department may issue a notice of
34 decertification to the process pursuant to Section 472.7.~~

~~35 SEC. 5. Section 472.4 of the Business and Professions
36 Code is amended to read:~~

~~37 472.4. In addition to any other requirements of this
38 chapter, the department shall do all of the following:~~

~~39 (a) Establish procedures to assist owners or lessees of
40 new motor vehicles who have complaints regarding the~~



1 operation of a qualified third-party dispute resolution
2 process.

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

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

13 (1) Onsite inspections of each qualified third-party
14 dispute resolution process not less frequently than twice
15 annually.

16 (2) Investigation of complaints from consumers
17 regarding the operation of qualified third-party dispute
18 resolution processes and analyses of representative
19 samples of complaints against each process.

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

22 (d) Establish minimum standards for the selection,
23 training, and removal of persons qualified to act as
24 arbitrators for qualified third-party dispute resolution
25 processes. The minimum standards shall include, but not
26 be limited to, the following requirements:

27 (1) Each person shall attend and complete the
28 training conducted pursuant to subdivision (c) of this
29 section or paragraph (11) of subdivision (d) of Section
30 1793.22 of the Civil Code.

31 (2) Each person shall pass an examination
32 demonstrating the knowledge necessary to apply the
33 statutes, regulations, and principles identified in
34 paragraph (11) of subdivision (d) of Section 1793.22 of the
35 Civil Code to disputes submitted to the dispute resolution
36 process and to render fair decisions in them.

37 (3) Each person shall attend and complete a
38 continuing education program at least every two years or
39 whenever the statutes or regulations identified in



1 paragraph (11) of subdivision (d) of Section 1793.22 of the
2 Civil Code are amended, whichever occurs earlier.

3 (e) Conduct training programs for arbitrators who
4 decide disputes. The subject of the training shall include
5 all of the statutes, regulations, and principles identified in
6 paragraph (11) of subdivision (d) of Section 1793.22 of the
7 Civil Code and their application to disputes submitted to
8 arbitration processes in California. The department's
9 program established pursuant to Section 472.1 may
10 provide this training by its own staff or by the staff of the
11 department, or may contract with a third party to do so.

12 (f) Notify the Department of Motor Vehicles of the
13 failure of a manufacturer to honor a decision of a qualified
14 third-party dispute resolution process to enable the
15 Department of Motor Vehicles to take appropriate
16 enforcement action against the manufacturer pursuant to
17 Section 11705.4 of the Vehicle Code.

18 (g) Submit a biennial report to the Legislature
19 evaluating the effectiveness of this chapter, make
20 available to the public summaries of the statistics and
21 other information supplied by each qualified third-party
22 dispute resolution process, and publish educational
23 materials regarding the purposes of this chapter.

24 (h) (1) Establish a toll-free telephone number
25 through which consumers can receive information on the
26 availability of a qualified third-party dispute resolution
27 process for each make of motor vehicle regularly sold in
28 this state, with a brief description of the dispute resolution
29 process, if any. The department shall provide this
30 information based on information submitted to it by auto
31 manufacturers and the qualified third-party dispute
32 resolution processes, if any, that they sponsor. It shall be
33 the responsibility of the manufacturers and processes to
34 provide the department the information that it needs for
35 this purpose.

36 (2) The department's toll-free telephone number shall
37 provide a consumer with referrals to a toll-free telephone
38 number operated by each qualified third-party dispute
39 resolution process through which consumers can obtain
40 information on both of the following:



1 ~~(A) The proper use of the services of each qualified~~
2 ~~third party dispute resolution process, including all of the~~
3 ~~information that a buyer or lessee needs in order to~~
4 ~~submit a dispute to the dispute resolution process.~~

5 ~~(B) The current status of each dispute that has been~~
6 ~~submitted to each qualified third party dispute resolution~~
7 ~~process.~~

8 ~~(3) It shall be the responsibility of each qualified~~
9 ~~third party dispute resolution process, and not the~~
10 ~~department, to provide all of the information required by~~
11 ~~paragraph (2) to consumers through a toll-free telephone~~
12 ~~number. It shall be the continuing responsibility of each~~
13 ~~qualified third party dispute resolution process to~~
14 ~~provide the department its current toll-free telephone~~
15 ~~number and the current text of the information it~~
16 ~~provides as required by subparagraph (A) of paragraph~~
17 ~~(2).~~

18 ~~(i) Adopt regulations as necessary and appropriate to~~
19 ~~implement this chapter and subdivision (d) of Section~~
20 ~~1793.22 of the Civil Code.~~

21 ~~SEC. 6. Section 472.5 of the Business and Professions~~
22 ~~Code is amended to read:~~

23 ~~472.5. The New Motor Vehicle Board in the~~
24 ~~Department of Motor Vehicles shall, in accordance with~~
25 ~~the procedures prescribed in this section, administer the~~
26 ~~collection of fees for the purposes of fully funding the~~
27 ~~administration of this chapter.~~

28 ~~(a) Fees collected pursuant to this section shall be~~
29 ~~deposited in the Certification Account in the Consumer~~
30 ~~Affairs Fund and shall be available, upon appropriation~~
31 ~~by the Legislature, exclusively to pay the expenses~~
32 ~~incurred by the department in administering this chapter~~
33 ~~and to pay the New Motor Vehicle Board as provided in~~
34 ~~Section 3016 of the Vehicle Code. If at the conclusion of~~
35 ~~any fiscal year the amount of fees collected exceeds the~~
36 ~~amount of expenditures for that purpose during that fiscal~~
37 ~~year, the surplus in the Certification Account shall be~~
38 ~~carried over into the succeeding fiscal year.~~

39 ~~(b) Beginning July 1, 1988, and on or before May 1 of~~
40 ~~each calendar year thereafter, every manufacturer shall~~



1 file with the New Motor Vehicle Board a statement of the
2 number of motor vehicles sold, leased, or otherwise
3 distributed by or for the manufacturer in this state during
4 the preceding calendar year, and shall, upon written
5 notice delivered to the manufacturer by certified mail,
6 return receipt requested, pay to the New Motor Vehicle
7 Board a fee, not to exceed one dollar (\$1) for each motor
8 vehicle sold, leased, or distributed by or for the
9 manufacturer in this state during the preceding calendar
10 year. The total fee paid by each manufacturer shall be
11 rounded to the nearest dollar in the manner described in
12 Section 9559 of the Vehicle Code. Not more than one
13 dollar (\$1) shall be charged, collected, or received from
14 any one or more manufacturers pursuant to this
15 subdivision with respect to the same motor vehicle.

16 (e) (1) The fee required by subdivision (b) is due and
17 payable not later than 30 days after the manufacturer has
18 received notice of the amount due and is delinquent after
19 that time. A penalty of 10 percent of the amount
20 delinquent shall be added to that amount, if the
21 delinquency continues for more than 30 days.

22 (2) If a manufacturer fails to file the statement
23 required by subdivision (b) by the date specified, the
24 New Motor Vehicle Board shall assess the amount due
25 from the manufacturer by using as the number of motor
26 vehicles sold, leased, or otherwise distributed by or for the
27 manufacturer in this state during the preceding calendar
28 year the total number of new registrations of all motor
29 vehicles sold, leased, or otherwise distributed by or for the
30 manufacturer during the preceding calendar year.

31 (d) On or before February 1 of each year, the
32 department shall notify the New Motor Vehicle Board of
33 the dollar amount necessary to fully fund the program
34 established by this chapter during the following fiscal
35 year. The New Motor Vehicle Board shall use this
36 information in calculating the amounts of the fees to be
37 collected from manufacturers pursuant to this section.

38 (e) For purposes of this section, "motor vehicle"
39 means a new passenger or commercial motor vehicle of
40 a kind that is required to be registered under the Vehicle



1 Code, but the term does not include a motorcycle, a
2 motor home, or any vehicle whose gross weight exceeds
3 10,000 pounds.

4 (f) The New Motor Vehicle Board may adopt
5 regulations to implement this section. The regulations
6 shall include, at a minimum, a formula for calculating the
7 fee, established pursuant to subdivision (b), for each
8 motor vehicle and the total amount of fees to be collected
9 from each manufacturer.

10 SEC. 7. Section 472.6 is added to the Business and
11 Professions Code, to read:

12 472.6. (a) The department may establish by
13 regulation a system for the issuance of citations to
14 qualified third-party dispute resolution processes. The
15 citation may contain an order of abatement or an order
16 to pay an administrative fine assessed by the department
17 if the process is not in compliance with subdivision (d) of
18 Section 1793.22 of the Civil Code, this chapter, or Chapter
19 2 (commencing with Section 3396.1) of Division 33 of
20 Title 16 of the California Code of Regulations.

21 (b) The system shall meet all of the following
22 requirements:

23 (1) Citations shall be in writing and shall describe with
24 particularity the nature of the violation, including
25 specific reference to the provision of law or regulation
26 determined to have been violated.

27 (2) Where appropriate, the citation shall contain an
28 order of abatement fixing a reasonable time for
29 abatement of the violation, which shall not exceed 60
30 days.

31 (3) In no event shall the administrative fine assessed
32 by the department exceed two thousand five hundred
33 dollars (\$2,500) for each violation. In assessing a fine, the
34 department shall give due consideration to the
35 appropriateness of the amount of the fine with respect to
36 such factors as the gravity of the violation, the good faith
37 of the process, and the history of previous violations.

38 (4) A citation shall inform the process that if it desires
39 a hearing to contest the finding of a violation, the process
40 shall request a hearing by written notice to the



1 department postmarked within 30 days of the date of
2 issuance of the citation or assessment. If a hearing is not
3 requested pursuant to this section, payment of any fine
4 shall not constitute an admission of the violation charged.
5 Hearings shall be held pursuant to Section 472.7.

6 (5) If the process fails to pay a fine within 30 days of the
7 date of assessment and if it has not requested a hearing,
8 the department may issue a notice of decertification
9 pursuant to Section 472.7.

10 (e) Administrative fines collected pursuant to this
11 section shall be deposited in the Certification Account in
12 the Consumer Affairs Fund.

13 (d) For purposes of this section “process” shall mean
14 a qualified third-party dispute resolution process as
15 defined in subdivision (e) of Section 472.

16 SEC. 8. Section 472.7 is added to the Business and
17 Professions Code, to read:

18 472.7. (a) The department may issue a notice of
19 decertification of a process if the department finds that
20 the process is not in compliance with subdivision (d) of
21 Section 1793.22 of the Civil Code, this chapter, or Chapter
22 2 (commencing with Section 3396.1) of Division 33 of
23 Title 16 of the California Code of Regulations. The
24 department shall serve the notice on the process as set
25 forth in subdivision (i). The notice shall state all of the
26 following:

27 (1) The grounds for the decertification with sufficient
28 particularity to give notice of the violations of subdivision
29 (d) of Section 1793.22 of the Civil Code, this chapter, or
30 Chapter 2 (commencing with Section 3396.1) of Division
31 33 of Title 16 of the California Code of Regulations on
32 which the action is based.

33 (2) The right to a hearing and the time period within
34 which the process may request a hearing in writing. The
35 time period shall be at least 15 days, but not more than 30
36 days, after receipt of the notice.

37 (3) The right to be present at the hearing, to be
38 represented by counsel, to cross-examine witnesses, and
39 to present evidence.



1 ~~(4) That the decertification set forth in the notice will~~
2 ~~be become final if the process does not request a hearing~~
3 ~~in writing within the time period expressed in the notice.~~

4 ~~(e) If the process requests a hearing in writing within~~
5 ~~the time stated in the notice, the department shall~~
6 ~~schedule a hearing. The hearing shall be held in~~
7 ~~Sacramento. The department shall serve reasonable~~
8 ~~notice of the time and place for the hearing at least 30~~
9 ~~days before the hearing date. The department may~~
10 ~~continue the date of the hearing upon a showing of good~~
11 ~~cause.~~

12 ~~(d) (1) Any party, including the department, may~~
13 ~~submit a written request to any other party before the~~
14 ~~hearing to obtain the names and addresses of any person~~
15 ~~who has personal knowledge, or who the party receiving~~
16 ~~the request claims to have personal knowledge, of any of~~
17 ~~the violations that are the bases of the administrative~~
18 ~~action. In addition, the requesting party shall have the~~
19 ~~right to inspect and copy any written statement made by~~
20 ~~that person and any writing, as defined in Section 250 of~~
21 ~~the Evidence Code, or thing that is in the custody, or~~
22 ~~under the control, of the party receiving the request and~~
23 ~~that is relevant and not privileged. This subdivision shall~~
24 ~~constitute the exclusive method for prehearing~~
25 ~~discovery. However, nothing herein shall affect the~~
26 ~~department's authority at any time to investigate,~~
27 ~~inspect, monitor, or obtain and copy information under~~
28 ~~any provision of this chapter.~~

29 ~~(2) The written request described in paragraph (1)~~
30 ~~shall be made before the hearing and within 30 days of the~~
31 ~~service of the notice described in subdivision (b). Each~~
32 ~~recipient of a request shall comply with the request~~
33 ~~within 15 days of its service by providing the names and~~
34 ~~addresses requested and by producing, at a reasonable~~
35 ~~time, at the department or another mutually agreed upon~~
36 ~~place, the requested writings and things. The department~~
37 ~~may extend the time for response upon a showing of good~~
38 ~~cause.~~

39 ~~(3) Except as provided in this paragraph, no party may~~
40 ~~introduce the testimony or statement of any person or~~



1 any writing or thing into evidence at the hearing if that
2 party failed to provide the name and address of the
3 person or to produce the writing or thing for inspection
4 and copying as provided by this subdivision. A party may
5 introduce the testimony, statement, writing, or thing that
6 was not identified or produced as required herein only if
7 there is no objection or if the party establishes that the
8 person, writing, or thing was unknown at the time when
9 the response was made to the written request, the party
10 could not have informed other parties within a reasonable
11 time after learning of the existence of the person, writing,
12 or thing, and no party would be prejudiced by the
13 introduction of the evidence.

14 (c) Before the hearing commences, the department
15 shall issue subpoenas at the written request of any party
16 for the attendance of witnesses or the production of
17 documents or other things in the custody or under the
18 control of the person subject to the subpoena. Subpoenas
19 issued pursuant to this section shall be subject to Section
20 11510 of the Government Code.

21 (f) (1) The department shall designate an impartial
22 hearing officer to conduct the hearing. The hearing
23 officer may administer oaths and affirmations, regulate
24 the course of the hearing, question witnesses, and
25 otherwise investigate the issues, take official notice
26 according to the procedure provided in Division 4
27 (commencing with Section 450) of the Evidence Code of
28 any technical matter in the department's special field of
29 expertise and of any matter that may be judicially
30 noticed, set the time and place for continued hearings, fix
31 the time for the filing of briefs and other documents,
32 direct any party to appear and confer to consider the
33 simplification of issues by consent, and prepare a
34 statement of decision.

35 (2) Neither a hearing officer nor any person who has
36 a direct or indirect interest in the outcome of the hearing
37 shall communicate directly or indirectly with each other
38 regarding any issue involved in the hearing while the
39 proceeding is pending without notice and opportunity for
40 all parties to participate in the communication. A hearing



1 officer who received any ex parte communication shall
2 immediately disclose the communication to the
3 department and the process.

4 (g) (1) Each party at the hearing shall be afforded an
5 opportunity to present evidence, respond to evidence
6 presented by other parties, cross-examine, and present
7 written argument or, if permitted by the hearing officer,
8 oral argument on the issues involved in the hearing. The
9 department may call any party as a witness who may be
10 examined as if under cross-examination.

11 (2) Each party may appear through its representative
12 or through legal counsel.

13 (3) Oral evidence shall be taken only upon oath or
14 affirmation.

15 (4) The hearing shall be recorded by tape recording of
16 other phonographic means unless all parties agree to
17 another method of recording the proceedings.

18 (5) (A) At any time 10 or more days before the
19 hearing, any party may serve on the other parties a copy
20 of any declaration which the party proposes to introduce
21 in evidence.

22 (B) The declaration shall be accompanied by a notice
23 indicating the date of service of the notice and stating that
24 the declarations will be offered into evidence, the
25 declarants will not be called as witnesses, and there will
26 be no right of cross-examination unless the party
27 receiving the notice requests the right to cross-examine,
28 in writing, within seven days of the service of the
29 declarations and notice.

30 (C) If no request for cross-examination is served
31 within seven days of the service of the declarations and
32 notice described in subparagraph (B), the right to
33 cross-examination is deemed waived and the declaration
34 shall have the same effect as if the declarant testified
35 orally. Notwithstanding this paragraph, a declaration may
36 be admitted as hearsay evidence without
37 cross-examination.

38 (6) Disposition of any issues involved in the hearing
39 may be made by stipulation or settlement.



1 ~~(7) If a party fails to appear at a hearing, that party's~~
2 ~~default shall be taken and the party shall be deemed to~~
3 ~~have waived the hearing and agreed to the~~
4 ~~decertification and the grounds for it described in the~~
5 ~~notice given pursuant to subdivision (b). The~~
6 ~~department shall serve the party with an order of default~~
7 ~~including the decertification. The order shall be effective~~
8 ~~upon service. The department may relieve a party from~~
9 ~~an order of default if the party applies for relief within 15~~
10 ~~days after the service of an order of default and establishes~~
11 ~~good cause for relief. An application for relief from~~
12 ~~default shall not stay the effective date of the order unless~~
13 ~~expressly provided by the department.~~

14 ~~(h) (1) Within 30 days after the conclusion of the~~
15 ~~hearing or at another time established by the~~
16 ~~department, the hearing officer shall submit a written~~
17 ~~statement of decision setting forth a recommendation for~~
18 ~~a final decision and explaining the factual and legal basis~~
19 ~~for the decision as to each of the grounds for the~~
20 ~~decertification set forth in the notice. The department~~
21 ~~shall serve the hearing officer's statement of decision on~~
22 ~~each party and its counsel within 10 days of its submission~~
23 ~~by the hearing officer.~~

24 ~~(2) The director of the department or his or her~~
25 ~~designee shall make the final decision which shall be~~
26 ~~based exclusively on evidence introduced at the hearing.~~
27 ~~The final decision shall be supported by substantial~~
28 ~~evidence in the record. The director or designee shall also~~
29 ~~(A) issue a statement of decision explaining the factual~~
30 ~~and legal basis for the final decision as to each of the~~
31 ~~grounds for the decertification set forth in the notice, and~~
32 ~~(B) issue an order based on his or her decision which shall~~
33 ~~be effective upon service or at any other time designated~~
34 ~~in the order. The department shall serve a copy of the~~
35 ~~final decision and order, within 10 days of their issuance,~~
36 ~~on each party and its counsel.~~

37 ~~(3) The department shall serve a certified copy of the~~
38 ~~complete record of the hearing, or any part thereof~~
39 ~~designated by a party, within 30 days after receiving the~~
40 ~~party's written request and payment of the cost of~~



1 ~~preparing the requested portions of the record. The~~
2 ~~complete record shall include all notices and orders~~
3 ~~issued by the department, a transcript of the hearing, the~~
4 ~~exhibits admitted or rejected, the written evidence and~~
5 ~~any other papers in the case, the hearing officer's~~
6 ~~statement of decision, and the final decision and order.~~

7 ~~(i) The department shall serve all notices and other~~
8 ~~documents that are required to be served by this section~~
9 ~~on each party by personal delivery, by certified mail,~~
10 ~~return receipt requested, or by any other means~~
11 ~~designated by the department.~~

12 ~~(j) (1) Any party aggrieved by the director's final~~
13 ~~decision and order may seek judicial review by filing a~~
14 ~~petition for a writ of mandate pursuant to Section 1085 of~~
15 ~~the Code of Civil Procedure within 30 days of the issuance~~
16 ~~of the final decision and order. If review is not sought~~
17 ~~within that period, the party's right to review shall be~~
18 ~~deemed waived.~~

19 ~~(2) The aggrieved party shall present the complete~~
20 ~~record of the hearing or all portions of the record~~
21 ~~necessary for the court's review of the department's final~~
22 ~~decision and order. The court shall deny the petition for~~
23 ~~a writ of mandate if the record submitted by the party is~~
24 ~~incomplete. The court shall not consider any matter not~~
25 ~~contained in the record. The factual bases supporting the~~
26 ~~final decision set forth in the director's statement of~~
27 ~~decision shall be conclusive if supported by substantial~~
28 ~~evidence on the record considered as a whole.~~

29 ~~(3) The final order shall not be stayed or enjoined~~
30 ~~during review except upon the court's grant of an order~~
31 ~~on a party's application after due notice to the~~
32 ~~department and its counsel. The order shall be granted~~
33 ~~only if the party establishes the substantial likelihood that~~
34 ~~it will prevail on the merits.~~

35 ~~(k) For purposes of this section, "good cause" shall~~
36 ~~require sufficient ground or reason for the determination~~
37 ~~to be made by the department.~~

38 ~~(l) For purposes of this section, "process" means a~~
39 ~~qualified third-party dispute resolution process as defined~~
40 ~~in subdivision (e) of Section 472.~~



1 ~~SEC. 9. Section 1793.22 of the Civil Code is amended~~
2 ~~to read:~~

3 ~~1793.22. (a) This section shall be known and may be~~
4 ~~cited as the Tanner Consumer Protection Act.~~

5 ~~(b) It shall be presumed that a reasonable number of~~
6 ~~attempts have been made to conform a new motor~~
7 ~~vehicle to the applicable express warranties if, within one~~
8 ~~year from delivery to the buyer or 12,000 miles on the~~
9 ~~odometer of the vehicle, whichever occurs first, either~~
10 ~~(1) the same nonconformity has been subject to repair~~
11 ~~four or more times by the manufacturer or its agents and~~
12 ~~the buyer has at least once directly notified the~~
13 ~~manufacturer of the need for the repair of the~~
14 ~~nonconformity or (2) the vehicle is out of service by~~
15 ~~reason of repair of nonconformities by the manufacturer~~
16 ~~or its agents for a cumulative total of more than 30~~
17 ~~calendar days since delivery of the vehicle to the buyer.~~
18 ~~If the first repair attempt or the first full day out of service~~
19 ~~has occurred within one year from delivery to the buyer,~~
20 ~~this presumption shall apply if the other three repair~~
21 ~~attempts or the other 29 days out of service have occurred~~
22 ~~within two years from delivery to the buyer or 24,000~~
23 ~~miles on the vehicle's odometer, whichever occurs first.~~
24 ~~The 30-day limit shall be extended only if repairs cannot~~
25 ~~be performed due to conditions beyond the control of the~~
26 ~~manufacturer or its agents. The buyer shall be required~~
27 ~~to directly notify the manufacturer pursuant to~~
28 ~~paragraph (1) only if the manufacturer has clearly and~~
29 ~~conspicuously disclosed to the buyer, with the warranty~~
30 ~~or the owner's manual, the provisions of this section and~~
31 ~~that of subdivision (d) of Section 1793.2, including the~~
32 ~~requirement that the buyer must notify the~~
33 ~~manufacturer directly pursuant to paragraph (1). This~~
34 ~~presumption shall be a rebuttable presumption affecting~~
35 ~~the burden of proof, and it may be asserted by the buyer~~
36 ~~in any civil action, including an action in small claims~~
37 ~~court, or other formal or informal proceeding.~~

38 ~~(c) If a qualified third party dispute resolution process~~
39 ~~exists, and the buyer receives timely notification in~~
40 ~~writing of the availability of that qualified third party~~



1 ~~dispute resolution process with a description of its~~
2 ~~operation and effect, the presumption in subdivision (b)~~
3 ~~may not be asserted by the buyer until after the buyer has~~
4 ~~initially resorted to the qualified third party dispute~~
5 ~~resolution process as required in subdivision (d).~~
6 ~~Notification of the availability of the qualified third party~~
7 ~~dispute resolution process is not timely if the buyer suffers~~
8 ~~any prejudice resulting from any delay in giving the~~
9 ~~notification. If a qualified third party dispute resolution~~
10 ~~process does not exist, or if the buyer is dissatisfied with~~
11 ~~that third party decision, or if the manufacturer or its~~
12 ~~agent neglects to promptly fulfill the terms of the~~
13 ~~qualified third party dispute resolution process decision~~
14 ~~after the decision is accepted by the buyer, the buyer may~~
15 ~~assert the presumption provided in subdivision (b) in an~~
16 ~~action to enforce the buyer's rights under subdivision (d)~~
17 ~~of Section 1793.2. Any period of limitation of actions~~
18 ~~under any federal or California laws with respect to any~~
19 ~~person shall be extended for a period equal to the number~~
20 ~~of days between the date a complaint is filed with a~~
21 ~~third party dispute resolution process and the date of its~~
22 ~~decision or the date before which the manufacturer or its~~
23 ~~agent is required by the decision to fulfill its terms if the~~
24 ~~decision is accepted by the buyer, whichever occurs later.~~

25 ~~(d) A qualified third party dispute resolution process~~
26 ~~shall be one that does all of the following:~~

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

32 ~~(2) Is an entity that is separate and apart from the~~
33 ~~manufacturer, and that the manufacturer has no~~
34 ~~ownership interest in, control of, or influence over. The~~
35 ~~entity shall operate the third party dispute resolution~~
36 ~~process pursuant to a contract with the manufacturer~~
37 ~~which shall ensure that the entity's decisions will be free~~
38 ~~from any influence by the manufacturer.~~

39 ~~(3) Renders decisions which are binding on the~~
40 ~~manufacturer if the buyer elects to accept the decision.~~



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

5 ~~(5) Provides arbitrators who are assigned to decide~~
6 ~~disputes with copies of, and instruction in, the provisions~~
7 ~~of the Federal Trade Commission's regulations in Part 703~~
8 ~~of Title 16 of the Code of Federal Regulations as those~~
9 ~~regulations read on January 1, 1987, Division 2~~
10 ~~(commencing with Section 2101) of the Commercial~~
11 ~~Code, and this chapter.~~

12 ~~(6) Requires the manufacturer, when the process~~
13 ~~orders, under the terms of this chapter, either that the~~
14 ~~nonconforming motor vehicle be replaced if the buyer~~
15 ~~consents to this remedy or that restitution be made to the~~
16 ~~buyer, to replace the motor vehicle or make restitution~~
17 ~~in accordance with paragraph (2) of subdivision (d) of~~
18 ~~Section 1793.2.~~

19 ~~(7) Provides, at the request of the arbitrator or a~~
20 ~~majority of the arbitration panel, for an inspection and~~
21 ~~written report on the condition of a nonconforming~~
22 ~~motor vehicle, at no cost to the buyer, by an automobile~~
23 ~~expert who is independent of the manufacturer.~~

24 ~~(8) (A) Applies the law governing both the~~
25 ~~applicability and the application of the presumption~~
26 ~~described in subdivision (b).~~

27 ~~(B) Takes into account, in rendering decisions, all~~
28 ~~legal and equitable factors, including, but not limited to,~~
29 ~~the written warranty, the rights and remedies conferred~~
30 ~~in regulations of the Federal Trade Commission~~
31 ~~contained in Part 703 of Title 16 of the Code of Federal~~
32 ~~Regulations as those regulations read on January 1, 1987,~~
33 ~~Division 2 (commencing with Section 2101) of the~~
34 ~~Commercial Code, this chapter, Article 3 (commencing~~
35 ~~with Section 3398.1) of Chapter 2 of Division 33 of Title~~
36 ~~16 of the California Code of Regulations, and any other~~
37 ~~equitable considerations appropriate in the~~
38 ~~circumstances. Nothing in this chapter requires that, to~~
39 ~~be certified as a qualified third-party dispute resolution~~
40 ~~process pursuant to this section, decisions of the process~~



1 ~~must consider or provide remedies in the form of awards~~
2 ~~of punitive damages or multiple damages, under~~
3 ~~subdivision (c) of Section 1794, or of attorneys' fees under~~
4 ~~subdivision (d) of Section 1794, or of consequential~~
5 ~~damages other than as provided in subdivisions (a) and~~
6 ~~(b) of Section 1794, including, but not limited to,~~
7 ~~reasonable repair, towing, and rental car costs actually~~
8 ~~incurred by the buyer.~~

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

17 ~~(10) Permits oral presentations in accordance with all~~
18 ~~of the following:~~

19 ~~(A) A buyer or lessee shall have the right to make an~~
20 ~~oral presentation in a dispute that he or she has submitted~~
21 ~~to a qualified third-party dispute resolution process. If the~~
22 ~~buyer or lessee chooses to make an oral presentation, then~~
23 ~~the manufacturer also shall have the right to make an oral~~
24 ~~presentation.~~

25 ~~(B) The dispute resolution process shall provide the~~
26 ~~buyer or lessee written notice of his or her right to make~~
27 ~~an oral presentation. The notice also shall include (i) an~~
28 ~~explanation that if the buyer or lessee chooses to make an~~
29 ~~oral presentation, the manufacturer also may do so, (ii)~~
30 ~~a statement that the parties may be represented by~~
31 ~~counsel at the oral presentation at their own expense, (iii)~~
32 ~~a brief explanation of the procedures to be followed at the~~
33 ~~oral presentation, and (iv) a form that the buyer or lessee~~
34 ~~may use to notify the dispute resolution process that he~~
35 ~~or she chooses to make an oral presentation.~~

36 ~~(C) Upon the dispute resolution process' receipt of the~~
37 ~~buyer's or lessee's notice that he or she chooses to make~~
38 ~~an oral presentation, the process shall schedule the oral~~
39 ~~presentation and shall provide all parties to the dispute~~
40 ~~reasonable advance written notice of its time and place.~~



~~1 The location for the oral presentation shall be in
2 California and within 50 miles of the dealership where the
3 sale or lease of the motor vehicle occurred; but if the
4 buyer or lessee lives in a rural area, the location shall be
5 within 100 miles of the dealership. The buyer or lessee
6 may request that the location for the oral presentation be
7 a greater distance from the dealership. The time and
8 location for the oral presentation shall be reasonably
9 convenient to the buyer or lessee.~~

~~10 (D) All of the arbitrators who will render the decision
11 in the dispute shall hear the oral presentation.~~

~~12 (E) All parties to the dispute shall be allowed to attend
13 the oral presentation and present information.~~

~~14 (F) Any party to the dispute may appear at the oral
15 presentation and be represented by counsel at that
16 party's sole expense.~~

~~17 (G) A party's failure to appear at a properly noticed
18 and scheduled oral presentation shall not prevent the
19 other party from making an oral presentation, presenting
20 properly disclosed documentation and testimony, and
21 making a closing statement.~~

~~22 (H) The dispute resolution process shall cause a report
23 of its investigation to be delivered to each arbitrator and
24 to each party at least eight days before the date of the oral
25 hearing.~~

~~26 (I) The dispute resolution process may adopt and
27 enforce a code of behavior that requires reasonable
28 standards of conduct by all participants at oral
29 presentations.~~

~~30 (J) If the dispute resolution process prepares a written
31 transcript or summary of an oral presentation, it shall
32 cause a free copy of the transcript or summary to be
33 provided to each party to the dispute. The transcript or
34 testimony shall not be admissible in a court action.~~

~~35 (11) Provides training to arbitrators who decide
36 disputes regarding the applicability and application of
37 the presumption described in subdivision (b); express
38 and implied warranties; the rights and remedies
39 conferred in regulations of the Federal Trade
40 Commission contained in Part 703 of Title 16 of the Code~~



1 of Federal Regulations as those regulations read on
2 January 1, 1987; Division 2 (commencing with Section
3 2101) of the Commercial Code; this chapter; remedies
4 under subdivisions (a) and (b) of Section 1794; and the
5 Minimum Standards for Arbitration Programs contained
6 in Article 2 (commencing with Section 3397.1) of Chapter
7 2 of Division 33 of Title 16 of the California Code of
8 Regulations. The training shall include the application of
9 all of the foregoing to disputes submitted to the dispute
10 resolution process. The training shall meet at least the
11 minimum standards required by subdivision (d) of
12 Section 472.4 of the Business and Professions Code.

13 (12) Obtains and maintains certification by the
14 Department of Consumer Affairs pursuant to Chapter 9
15 (commencing with Section 472) of Division 1 of the
16 Business and Professions Code.

17 (e) For the purposes of subdivision (d) of Section
18 1793.2 and this section, the following terms have the
19 following meanings:

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

23 (2) The term "new motor vehicle" includes all of the
24 following:

25 (A) A new motor vehicle which is used or bought or
26 leased for use primarily for personal, family, or household
27 purposes.

28 (B) A new motor vehicle which is bought or leased by
29 a sole proprietorship, corporation, or partnership that has
30 bought or leased no more than one vehicle per 12-month
31 period for business use, or for personal, family, or
32 household purposes and for business use.

33 (C) The chassis, chassis cab, and that portion of a
34 motor home devoted to its propulsion, excluding any
35 portion designed, used, or maintained primarily for
36 human habitation.

37 (D) A dealer-owned vehicle and a "demonstrator" or
38 other new or used motor vehicle sold with all or the
39 unexpired portion of the manufacturer's original express
40 warranty. A "demonstrator" is a vehicle assigned by a



1 dealer for the purpose of demonstrating qualities and
2 characteristics common to vehicles of the same or similar
3 model and type.

4 The term “new motor vehicle” does not include a
5 motorcycle or a motor vehicle which is not registered
6 under the Vehicle Code because it is to be operated or
7 used exclusively off the highways.

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

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

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

31 SEC. 10. Section 1793.23 is added to the Civil Code, to
32 read:

33 1793.23. (a) This section applies only if the
34 manufacturer has a qualified third-party dispute
35 resolution process, as described in subdivision (d) of
36 Section 1793.22, at the time the buyer files an action to
37 enforce the buyer’s rights under paragraph (2) of
38 subdivision (d) of Section 1793.2.

39 (b) Within seven days after the buyer commences an
40 action described in subdivision (a), the buyer shall



1 ~~deliver to the manufacturer's qualified third-party~~
2 ~~dispute resolution process a completed application for~~
3 ~~arbitration of the dispute which gives rise to that action.~~

4 ~~(e) If the buyer fails to deliver a completed application~~
5 ~~for arbitration as described in subdivision (b), the court~~
6 ~~shall dismiss the buyer's action without prejudice.~~

7 ~~(d) A civil action filed in accordance with subdivision~~
8 ~~(b), shall be stayed for a period of 40 days and the~~
9 ~~defendant shall not be required to respond to the~~
10 ~~plaintiff's complaint during that period. No discovery~~
11 ~~shall be conducted during the 40-day stay. However, the~~
12 ~~court may order that discovery be allowed during the~~
13 ~~40-day stay if it finds that the interests of justice so require.~~

14 ~~(e) The qualified dispute resolution process shall~~
15 ~~render its decision in the dispute before the end of the~~
16 ~~40-day stay. The court may order that the 40-day stay be~~
17 ~~extended up to 20 additional days upon joint motion of the~~
18 ~~parties for such an extension.~~

19 ~~(f) If the dispute resolution process fails to render its~~
20 ~~decision by the end of the stay, or if the buyer does not~~
21 ~~accept its decision, the buyer's civil action shall proceed.~~
22 ~~The defendant shall file its response to the complaint by~~
23 ~~the later of seven days after the end of the stay or receipt~~
24 ~~of the buyer's notice that he or she does not accept the~~
25 ~~decision of the qualified dispute resolution process.~~

26 ~~(g) An action filed as described in subdivision (b) is~~
27 ~~exempt from judicial arbitration.~~

28 ~~SEC. 11. Section 1794 of the Civil Code is amended to~~
29 ~~read:~~

30 ~~1794. (a) Any buyer of consumer goods who is~~
31 ~~damaged by a failure to comply with any obligation under~~
32 ~~this chapter or under an implied or express warranty or~~
33 ~~service contract may bring an action for the recovery of~~
34 ~~damages and other legal and equitable relief.~~

35 ~~(b) The measure of the buyer's damages in an action~~
36 ~~under this section shall include the rights of replacement~~
37 ~~or reimbursement as set forth in subdivision (d) of~~
38 ~~Section 1793.2, and the following:~~

39 ~~(1) Where the buyer has rightfully rejected or~~
40 ~~justifiably revoked acceptance of the goods or has~~



1 ~~exercised any right to cancel the sale, Sections 2711, 2712,~~
2 ~~and 2713 of the Commercial Code shall apply.~~

3 ~~(2) Where the buyer has accepted the goods, Sections~~
4 ~~2714 and 2715 of the Commercial Code shall apply, and~~
5 ~~the measure of damages shall include the cost of repairs~~
6 ~~necessary to make the goods conform.~~

7 ~~(e) (1) If the buyer establishes by a preponderance of~~
8 ~~the evidence that the failure to comply was willful, the~~
9 ~~judgment may include, in addition to the amounts~~
10 ~~recovered under subdivision (a), a civil penalty which~~
11 ~~shall not exceed two times the amount of actual damages.~~
12 ~~In assessing the amount of the civil penalty, the trier of~~
13 ~~fact shall consider the manufacturer's diligence, if any, in~~
14 ~~attempting to perform its obligation, and the aggravation~~
15 ~~and inconvenience, if any, suffered by the buyer as a~~
16 ~~result of the manufacturer's failure to comply.~~

17 ~~(2) This subdivision shall not apply in any class action~~
18 ~~under Section 382 of the Code of Civil Procedure or under~~
19 ~~Section 1781, or with respect to a claim based solely on a~~
20 ~~breach of an implied warranty.~~

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

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

35 ~~(2) If the manufacturer maintains a qualified~~
36 ~~third-party dispute resolution process which complies~~
37 ~~with Section 1793.22, the manufacturer shall not be liable~~
38 ~~for any civil penalty pursuant to this subdivision.~~

39 ~~(3) After the occurrence of the events giving rise to~~
40 ~~the presumption established in subdivision (b) of Section~~



1 ~~1793.22, the buyer may serve upon the manufacturer a~~
2 ~~written notice requesting that the manufacturer comply~~
3 ~~with paragraph (2) of subdivision (d) of Section 1793.2.~~
4 ~~If the buyer fails to serve the notice, the manufacturer~~
5 ~~shall not be liable for a civil penalty pursuant to this~~
6 ~~subdivision.~~

7 ~~(4) If the buyer serves the notice described in~~
8 ~~paragraph (3) and the manufacturer complies with~~
9 ~~paragraph (2) of subdivision (d) of Section 1793.2 within~~
10 ~~30 days of the service of that notice, the manufacturer~~
11 ~~shall not be liable for a civil penalty pursuant to this~~
12 ~~subdivision.~~

13 ~~(5) If the buyer recovers a civil penalty under~~
14 ~~subdivision (e), the buyer may not also recover a civil~~
15 ~~penalty under this subdivision for the same violation.~~

