

AMENDED IN ASSEMBLY MAY 4, 1995
AMENDED IN ASSEMBLY APRIL 25, 1995
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 repeal Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code, *and to amend Section 1794 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 repeal these provisions.

(2) *Existing law generally provides for relief for a failure to comply with the Song-Beverly Consumer Warranty Act. That act requires, 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 to either promptly replace the new motor vehicle or promptly make restitution to the buyer, as specified. Existing law specifically provides that if the buyer establishes a violation of this provision, the buyer shall recover damages, reasonable*

attorney's fees, and costs and may recover a civil penalty, except as specified.

This bill would delete the specific provisions regarding recovery of damages, attorney's fees, and costs, and a civil penalty.

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. Chapter 9 (commencing with Section
2 472) of Division 1 of the Business and Professions Code is
3 repealed.

4 SEC. 2. Section 1794 of the Civil Code is amended to
5 read:

6 1794. (a) Any buyer of consumer goods who is
7 damaged by a failure to comply with any obligation under
8 this chapter or under an implied or express warranty or
9 service contract may bring an action for the recovery of
10 damages and other legal and equitable relief.

11 (b) The measure of the buyer's damages in an action
12 under this section shall include the rights of replacement
13 or reimbursement as set forth in subdivision (d) of
14 Section 1793.2, and the following:

15 (1) Where the buyer has rightfully rejected or
16 justifiably revoked acceptance of the goods or has
17 exercised any right to cancel the sale, Sections 2711, 2712,
18 and 2713 of the Commercial Code shall apply.

19 (2) Where the buyer has accepted the goods, Sections
20 2714 and 2715 of the Commercial Code shall apply, and
21 the measure of damages shall include the cost of repairs
22 necessary to make the goods conform.

23 (c) If the buyer establishes that the failure to comply
24 was willful, the judgment may include, in addition to the
25 amounts recovered under subdivision (a), a civil penalty
26 which shall not exceed two times the amount of actual
27 damages. This subdivision shall not apply in any class
28 action under Section 382 of the Code of Civil Procedure
29 or under Section 1781, or with respect to a claim based
30 solely on a breach of an implied warranty.



1 (d) If the buyer prevails in an action under this
2 section, the buyer shall be allowed by the court to recover
3 as part of the judgment a sum equal to the aggregate
4 amount of costs and expenses, including attorney's fees
5 based on actual time expended, determined by the court
6 to have been reasonably incurred by the buyer in
7 connection with the commencement and prosecution of
8 such action.

9 ~~(e) (1) Except as otherwise provided in this~~
10 ~~subdivision, if the buyer establishes a violation of~~
11 ~~paragraph (2) of subdivision (d) of Section 1793.2, the~~
12 ~~buyer shall recover damages and reasonable attorney's~~
13 ~~fees and costs, and may recover a civil penalty of up to two~~
14 ~~times the amount of damages.~~

15 ~~(2) If the manufacturer maintains a qualified~~
16 ~~third-party dispute resolution process which substantially~~
17 ~~complies with Section 1793.22, the manufacturer shall not~~
18 ~~be liable for any civil penalty pursuant to this subdivision.~~

19 ~~(3) After the occurrence of the events giving rise to~~
20 ~~the presumption established in subdivision (b) of Section~~
21 ~~1793.22, the buyer may serve upon the manufacturer a~~
22 ~~written notice requesting that the manufacturer comply~~
23 ~~with paragraph (2) of subdivision (d) of Section 1793.2.~~
24 ~~If the buyer fails to serve the notice, the manufacturer~~
25 ~~shall not be liable for a civil penalty pursuant to this~~
26 ~~subdivision.~~

27 ~~(4) If the buyer serves the notice described in~~
28 ~~paragraph (3) and the manufacturer complies with~~
29 ~~paragraph (2) of subdivision (d) of Section 1793.2 within~~
30 ~~30 days of the service of that notice, the manufacturer~~
31 ~~shall not be liable for a civil penalty pursuant to this~~
32 ~~subdivision.~~

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

