

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2532

Introduced by Assembly Member Bill Berryhill

February 19, 2010

An act to amend Sections 1793.22 and 1793.23 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 2532, as amended, Bill Berryhill. Consumer warranties: Automotive Consumer Notification Act.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative 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 shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option.

The Tanner Consumer Protection Act defines "new motor vehicle" for the purposes of those provisions as including, among other things, a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than 5 motor vehicles are registered in this state.

This bill would ~~delete that meaning and instead~~ *additionally include in the definition of "new motor vehicle" a new motor vehicle used by a farmer exclusively in the transportation of his or her livestock,*

~~implements of husbandry, and agricultural commodities or in the transportation of supplies to his or her farm. “Motor vehicle” also includes a commercial motor vehicle or combination of new vehicles that requires a class A or class B license, or a class C license with a specified endorsement, regardless of weight.~~

The Automotive Consumer Notification Act requires, among other things, the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation “Lemon Law Buyback,” affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle as prescribed, and obtain the transferee’s acknowledgment.

The bill would define “motor vehicle” for the purposes of that act to include the resale of a new motor vehicle as defined in the Tanner Consumer Protection Act.

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 and may be cited as
- 4 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:
- 10 (1) The same nonconformity results in a condition that is likely
- 11 to cause death or serious bodily injury if the vehicle is driven and
- 12 the nonconformity has been subject to repair two or more times
- 13 by the manufacturer or its agents, and the buyer or lessee has at
- 14 least once directly notified the manufacturer of the need for the
- 15 repair of the nonconformity.
- 16 (2) The same nonconformity has been subject to repair four or
- 17 more times by the manufacturer or its agents and the buyer has at
- 18 least once directly notified the manufacturer of the need for the
- 19 repair of the nonconformity.

(3) 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 paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraphs (1) and (2). The notification, if required, shall be sent to the address, if any, specified clearly and conspicuously by the manufacturer in the warranty or owner's manual. This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution 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 that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process 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

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

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

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

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

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

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

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

28 (6) Provides, at the request of the arbitrator or a majority of the
29 arbitration panel, for an inspection and written report on the
30 condition of a nonconforming motor vehicle, at no cost to the
31 buyer, by an automobile expert who is independent of the
32 manufacturer.

33 (7) Takes into account, in rendering decisions, all legal and
34 equitable factors, including, but not limited to, the written warranty,
35 the rights and remedies conferred in regulations of the Federal
36 Trade Commission contained in Part 703 of Title 16 of the Code
37 of Federal Regulations as those regulations read on January 1,
38 1987, Division 2 (commencing with Section 2101) of the
39 Commercial Code, this chapter, and any other equitable
40 considerations appropriate in the circumstances. Nothing in this

chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

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

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

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

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

(2) "New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle ~~used by a farmer exclusively in the transportation of his or her livestock, implements of husbandry, and agricultural commodities or in the transportation of supplies to his or her farm.~~ "Motor vehicle" ~~also includes a~~ *with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state.* "New motor vehicle" *also includes a new commercial motor vehicle or combination of new vehicles that requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (5) of subdivision (a) of Section 15278 of the Vehicle Code, regardless of weight.* "New motor vehicle" includes the

1 chassis, chassis cab, and that portion of a motor home devoted to
2 its propulsion, but does not include any portion designed, used, or
3 maintained primarily for human habitation, a dealer-owned vehicle
4 and a “demonstrator” or other motor vehicle sold with a
5 manufacturer’s new car warranty but does not include a motorcycle
6 or a motor vehicle which is not registered under the Vehicle Code
7 because it is to be operated or used exclusively off the highways.
8 A demonstrator is a vehicle assigned by a dealer for the purpose
9 of demonstrating qualities and characteristics common to vehicles
10 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 chassis,
13 chassis cab, or van, which becomes an integral part of the
14 completed vehicle, designed for human habitation for recreational
15 or emergency occupancy.

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

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

32 SEC. 2. Section 1793.23 of the Civil Code is amended to read:
33 1793.23. (a) The Legislature finds and declares all of the
34 following:

35 (1) That the expansion of state warranty laws covering new and
36 used cars has given important and valuable protection to
37 consumers.

38 (2) That, in states without this valuable warranty protection,
39 used and irreparable motor vehicles are being resold in the
40 marketplace without notice to the subsequent purchaser.

1 (3) That other states have addressed this problem by requiring
2 notices on the title of these vehicles or other notice procedures to
3 warn consumers that the motor vehicles were repurchased by a
4 dealer or manufacturer because the vehicle could not be repaired
5 in a reasonable length of time or a reasonable number of repair
6 attempts or the dealer or manufacturer was not willing to repair
7 the vehicle.

8 (4) That these notices serve the interests of consumers who have
9 a right to information relevant to their buying decisions.

10 (5) That the disappearance of these notices upon the transfer of
11 title from another state to this state encourages the transport of
12 “lemons” to this state for sale to the drivers of this state.

13 (b) This section and Section 1793.24 shall be known, and may
14 be cited as, the Automotive Consumer Notification Act.

15 (c) Any manufacturer who reacquires or assists a dealer or
16 lienholder to reacquire a motor vehicle registered in this state, any
17 other state, or a federally administered district shall, prior to any
18 sale, lease, or transfer of the vehicle in this state, or prior to
19 exporting the vehicle to another state for sale, lease, or transfer if
20 the vehicle was registered in this state and reacquired pursuant to
21 paragraph (2) of subdivision (d) of Section 1793.2, cause the
22 vehicle to be retitled in the name of the manufacturer, request the
23 Department of Motor Vehicles to inscribe the ownership certificate
24 with the notation “Lemon Law Buyback,” and affix a decal to the
25 vehicle in accordance with Section 11713.12 of the Vehicle Code
26 if the manufacturer knew or should have known that the vehicle
27 is required by law to be replaced, accepted for restitution due to
28 the failure of the manufacturer to conform the vehicle to applicable
29 warranties pursuant to paragraph (2) of subdivision (d) of Section
30 1793.2, or accepted for restitution by the manufacturer due to the
31 failure of the manufacturer to conform the vehicle to warranties
32 required by any other applicable law of the state, any other state,
33 or federal law.

34 (d) Any manufacturer who reacquires or assists a dealer or
35 lienholder to reacquire a motor vehicle in response to a request by
36 the buyer or lessee that the vehicle be either replaced or accepted
37 for restitution because the vehicle did not conform to express
38 warranties shall, prior to the sale, lease, or other transfer of the
39 vehicle, execute and deliver to the subsequent transferee a notice

1 and obtain the transferee's written acknowledgment of a notice,
2 as prescribed by Section 1793.24.

3 (e) Any person, including any dealer, who acquires a motor
4 vehicle for resale and knows or should have known that the vehicle
5 was reacquired by the vehicle's manufacturer in response to a
6 request by the last retail owner or lessee of the vehicle that it be
7 replaced or accepted for restitution because the vehicle did not
8 conform to express warranties shall, prior to the sale, lease, or
9 other transfer, execute and deliver to the subsequent transferee a
10 notice and obtain the transferee's written acknowledgment of a
11 notice, as prescribed by Section 1793.24.

12 (f) Any person, including any manufacturer or dealer, who sells,
13 leases, or transfers ownership of a motor vehicle when the vehicle's
14 ownership certificate is inscribed with the notation "Lemon Law
15 Buyback" shall, prior to the sale, lease, or ownership transfer of
16 the vehicle, provide the transferee with a disclosure statement
17 signed by the transferee that states:

18
19 "THIS VEHICLE WAS REPURCHASED BY ITS
20 MANUFACTURER DUE TO A DEFECT IN THE VEHICLE
21 PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE
22 TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED
23 WITH THE NOTATION 'LEMON LAW BUYBACK'."

24
25 (g) The disclosure requirements in subdivisions (d), (e), and (f)
26 are cumulative with all other consumer notice requirements and
27 do not relieve any person, including any dealer or manufacturer,
28 from complying with any other applicable law, including any
29 requirement of subdivision (f) of Section 1793.22.

30 (h) For purposes of this section, the following definitions have
31 the following meanings:

32 (1) "Dealer" means any person engaged in the business of
33 selling, offering for sale, or negotiating the retail sale of, a used
34 motor vehicle or selling motor vehicles as a broker or agent for
35 another, including the officers, agents, and employees of the person
36 and any combination or association of dealers.

37 (2) "Motor vehicle" includes the resale of a new motor vehicle,
38 as defined in Section 1793.22.

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