

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1755 (Kalra)
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Fiscal: No
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SUBJECT

Civil actions: restitution for or replacement of a new motor vehicle

DIGEST

This bill amends the procedure for seeking specified remedies pursuant to the Song-Beverly Consumer Warranty Act (the Song-Beverly Act) in connection with nonconforming motor vehicles.

EXECUTIVE SUMMARY

The Song-Beverly Act provides consumer warranty protection to buyers of consumer goods, including motor vehicles. The act requires certain implied warranties to accompany the retail sale of consumer goods, including implied warranties of merchantability, as specified. Express warranties are written statements arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance.

Relevant here, portions of the Act, referred to as California's Lemon Law, protect consumers from defective vehicles that are under warranty, when they meet certain other criteria. However, concerns have arisen that the law is being misused, with supporters pointing to an uptick in cases filed. This bill seeks to make changes to the underlying processes for such lemon law claims, when seeking restitution or replacement of a vehicle, as specified. However, opposition argues that the issue is unsafe cars and the answer is not "weakening the lemon law." They point to the fact that cases are not across the board, but that, for instance, owners of General Motors vehicles are 26 times more likely to file a lawsuit than those who bought a Toyota.

This bill is sponsored by General Motors and the Consumer Attorneys of California. It is supported by the California Judges Association. It is opposed by a coalition of

consumer groups, including the Consumer Federation of American and Public Counsel; a coalition of vehicle manufacturers, including Toyota; and various attorneys specializing in such litigation.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Song-Beverly Consumer Warranty Act (Song-Beverly Act), which sets forth standards for warranties that govern consumer goods and outlines remedies available to purchasers. (Civ. Code § 1790 et seq.)
- 2) Requires every sale of consumer goods that are sold at retail in this state to be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. (Civ. Code § 1792.)
- 3) Provides that, except as specified, nothing in the Act affects the right of the manufacturer, distributor, or retailer to make express warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods. (Civ. Code § 1793.)
- 4) Requires every manufacturer, distributor, or retailer making express warranties with respect to consumer goods to fully set forth those warranties in simple and readily understood language, which shall clearly identify the party making the express warranties, and which shall conform to applicable federal standards. (Civ. Code § 1793.1.)
- 5) Defines "express warranty" to mean a written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance. In the event of any sample or model, an express warranty is that the whole of the goods conforms to such sample or model. (Civ. Code § 1791.2.)
- 6) Provides that, except as specified, it does not affect the right of a manufacturer, distributor, or retailer to make express warranties with respect to consumer goods, provided that the express warranties do not limit, modify, or disclaim the implied warranties. (Civ. Code § 1793.)
- 7) Requires that, if the 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 shall either promptly replace the new motor vehicle or promptly make restitution to the buyer, as provided. However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle. (Civ. Code § 1793.2(d).)

- 8) Provides that a buyer of a new motor vehicle shall also include a lessee of a new motor vehicle. (Civ. Code § 1793.2(d)(2)(D).)
- 9) Establishes the Tanner Consumer Protection Act (Tanner Act) to govern warranties for new motor vehicles. (Civ. Code § 1793.22.) Presumes, for the purpose of the Tanner Act, 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 to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:
 - a) The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents, and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
 - b) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
 - c) 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, as specified. (Civ. Code § 1793.22(b).)
- 10) Defines “nonconformity” to mean a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee. (Civ. Code § 1793.22(e)(1).)
- 11) Prohibits any automobile manufacturer, importer, distributor, dealer, or lienholder who reacquires, or who assists in reacquiring, a motor vehicle, whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, from doing either of the following:
 - a) Requiring, as a condition of the reacquisition, that a buyer or lessee agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition.
 - b) Including, in any release or other agreement, for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clause prohibiting the buyer or lessee from disclosing information to anyone about the problems with the vehicle, or the nonfinancial terms of the reacquisition of

the vehicle by the manufacturer, importer, distributor, dealer, or lienholder. (Civ. Code § 1793.26 (a).)

- 12) Provides that any such clause described above in such a release or other agreement related to the reacquisition of a motor vehicle is deemed to be null and void as against the public policy of this state. (Civ. Code § 1793.26(b).)
- 13) Provides that any buyer of consumer goods who is damaged by a manufacturer's failure to comply with any obligation under the Song-Beverly Consumer Warranty Act, the Tanner Act, or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. The measure of the buyer's damages in an action under this section shall include the rights of replacement or reimbursement, as provided. (Civ. Code § 1794.)
- 14) Provides that where the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the above, a civil penalty of up to two times the amount of actual damages. (Civ. Code § 1794(c).)
- 15) Provides that if a buyer prevails in such an action the buyer may recover, as part of the judgment, a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action. (Civ. Code § 1794(d).)
- 16) Provides that if a buyer establishes a violation of paragraph (7) above, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages, as provided. (Civ. Code § 1794(e).)

This bill:

- 1) Applies to an action seeking restitution or replacement of a motor vehicle pursuant to subdivision (b) or (d) of Section 1793.2, Section 1793.22, or Section 1794 of the Civil Code, or for civil penalties pursuant to subdivision (c) of Section 1794 of the Civil Code, where the request for restitution or replacement is based on noncompliance with the applicable express warranty.
- 2) Requires such actions to be commenced within one year after the expiration of the applicable express warranty but no later than six years after the date of original delivery of the motor vehicle, subject to specified tolling.
- 3) Requires a consumer, at least 30 days prior to the commencement of an action seeking civil penalties under subdivision (c) of Section 1794 of the Civil Code

(Section 1794(c)), to provide a specified notice to the manufacturer and demand repurchase or replacement. Minor deviations in the notice does not disqualify consumers from seeking civil penalties.

- 4) Provides that the notice must be in writing and sent either by email to the email address prominently displayed on the manufacturer's website for this purpose or by certified or registered mail, return receipt requested, to the address provided by the manufacturer in the owner's manual or warranty booklet. The notice information on the manufacturer's website, owner's manual, and warranty booklet shall be provided in both English and Spanish.
- 5) Requires the consumer to have possession of the vehicle at the time that notice is sent and to maintain possession of the motor vehicle for at least 30 days after the manufacturer's receipt of written notice seeking restitution or replacement.
- 6) Prohibits a request for or action seeking civil penalties under Section 1794(c) of the Civil Code from being allowed or maintained if both of the following conditions are present:
 - a) Within 30 days after receipt of the notice, the manufacturer makes an offer of restitution or replacement of the motor vehicle for the specified amount, plus reasonable attorneys' fees and costs, if the consumer is represented by an attorney.
 - b) The motor vehicle replacement or restitution is completed within 60 days from the date of receipt of the original notice.
- 7) Requires the consumer to comply in good faith with reasonable requests from the manufacturer for documentation required to complete the requested restitution or replacement of the motor vehicle.
- 8) Requires any pre-litigation dispute as to attorney's fees and costs to be resolved by neutral, binding arbitration.
- 9) Provides that if the manufacturer does not offer restitution or replacement of the motor vehicle within 30 days of receiving the consumer's notice, the consumer shall be permitted to sell their motor vehicle and seek remedies, including civil penalties under Section 1794(c). If the manufacturer offers restitution or replacement of the motor vehicle, the consumer shall maintain possession of the motor vehicle for the full 60 days after manufacturer's receipt of the consumer's notice.
- 10) Authorizes an action seeking restitution or replacement to be commenced without compliance with the above where the consumer shall have possession of the motor vehicle at the time of the filing of the complaint, and shall not seek civil penalties, whether by amendment of the complaint or otherwise. If notice is

thereafter provided and the manufacturer fails to timely comply with their obligations, the consumer may commence an action for restitution or replacement.

- 11) Requires a consumer to act in good faith in order to comply with the above. These provisions become operative on April 1, 2025.
- 12) Provides that a remedy in compliance herewith shall not be contingent on the execution of any release other than a “Standardized SBA Release” laid out in the bill.
- 13) Requires, in an action seeking restitution or replacement, that all parties, within 60 days after the filing of the answer or other responsive pleading,¹ and without awaiting a discovery request, provide to all other parties initial disclosures and documents, as specified. Within 120 days after the filing of the answer or responsive pleading, all parties have the right to conduct initial depositions, each not to exceed two hours, of the plaintiff and defendant, as provided. Within 90 days, all parties are required to schedule a mediation to occur within 150 days after filing of the responsive pleading with a court-appointed or private mediator, as provided. All other discovery is stayed pending the mediation. These provisions apply to civil actions filed on or after January 1, 2025.
- 14) Requires the court to impose specified sanctions, including monetary and evidentiary sanctions, against a party failing to comply without good cause with the above.
- 15) Provides manufacturers specified offsets in the calculation of the actual price paid or payable for specified goods or services and for negative equity in the transaction from prior vehicles. It provides specific calculations for determining damages and civil penalties with respect to leased vehicles.
- 16) Defines the relevant terms, including:
 - a) “Applicable express warranty” means the written warranty provided by the manufacturer at the time of delivery of the subject motor vehicle, which provides coverage for the specific nonconformity at issue in the action, subject to the terms and exclusions of that warranty.
 - b) “Manufacturer” means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods or motor vehicles.

¹ Amendments have been agreed to by the author and will be in print by hearing time that amend the bill to trigger the relevant timelines by the filing of not only an answer, but any other responsive pleading.

- 17) States that the duties and obligations imposed hereby are cumulative with duties or obligations imposed under any other law and shall not be construed to relieve any party from any duties or obligations imposed under any other law.

COMMENTS

1. Vehicle warranties

The Song-Beverly Act sets forth standards for warranties that govern vehicles and other consumer goods and outlines remedies available to buyers. Retail sales of consumer goods are accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. Such implied warranties can generally not be waived or otherwise modified except in limited, specified circumstances.

Express warranties are additional warranties that can be expressed by a manufacturer, distributor, or retailer in connection with the sale of consumer goods. They commit the entity to preserving or maintaining the utility or performance of the relevant good, or compensation if such warranty fails. Unlike implied warranties, they must be written statements as to their scope and application, pursuant to the Act.

At the federal level, the Magnuson-Moss Warranty Act requires entities providing express warranties to fully and conspicuously disclose in simple and readily understood language the terms and conditions of such a warranty. (15 U.S.C. § 2301 et seq.)

With respect to vehicles, if the manufacturer 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 new motor vehicle or promptly make restitution to the buyer. However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges.

The Tanner 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 to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:

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

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.

The law provides a series of remedies for buyers as a result of any violations thereof. Any buyer who is damaged by a failure to comply with any relevant obligation or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. A prevailing buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

Subdivision (c) of Section 1794 of the Civil Code (Section 1794(c)) provides that if the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the above amounts, a civil penalty which shall not exceed two times the amount of actual damages.

If the buyer establishes a violation of the section requiring a manufacturer to replace or provide restitution after a reasonable number of attempts to service or repair the vehicle, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

2. Stated intent of the bill

According to the author:

Given California's prevalent car culture, the state's lemon law statutes are a foundational consumer protection for millions of Californians. Unfortunately, in recent years a flurry of civil actions have been filed under the lemon law statutes and now discovery disputes and protracted settlement processes are serving to delay the court's processing of these cases. As a result California consumers are being denied justice and automobile manufacturers are facing significant legal uncertainty.

AB 1755 is a compromise measure between consumer advocates and automobile manufacturers that seeks to break the civil litigation log jam currently plaguing lemon law disputes. First, this measure provides for clear prelitigation procedures that seeks to protect consumers, provide clarity for automakers, and resolve disputes without ever requiring litigation. Secondly, this measure adopts a streamlined discovery process for cases that do get filed and encourages the use of mediation to resolve cases in a timely manner. Finally, the bill adopts consumer protections to ensure timely compliance with lemon law settlements.

AB 1755 strengthens the consumer protections of the lemon law statutes, provides equity and fairness for all parties to a lemon law dispute, and ensures timely access to justice for California consumers.

3. Revamping the process for seeking specified remedies via litigation

This bill reforms the process in any litigation seeking restitution or replacement of a motor vehicle pursuant to the above provisions, as specified, where the request is based on noncompliance with the applicable express warranty.

First, the bill constricts the timeline for bringing such actions. It requires such actions to be commenced within one year after the expiration of the applicable express warranty, but in no case to be brought more than six years after the date of original delivery, subject to specified tolling. Concerns have been raised from consumer groups who highlight that this is a drastic change that undermines warranties, such as those for EV batteries, that typically extend longer than 6 years.

The bill also imposes specified notice requirements on consumers. In an action for penalties pursuant to Section 1794(c), the consumer must provide written notice, as specified, to the manufacturer at least 30 days prior to the action, laying out basic information including a summary of the problems and repair history of the vehicle and demanding the manufacturer repurchase or replace the motor vehicle. The bill explicitly

provides some flexibility to consumers for complying therewith. However, consumer advocacy groups continue to express strong concerns with this notice requirement. Consumers for Auto Reliability and Safety argue:

When defects arise, most consumers take their car back to the dealership and complain to the dealer. Typically, the public does not distinguish between the dealer and the manufacturers. So they tend to assume that if they complain to the dealership, that is the same as complaining to the manufacturer. If they don't get anywhere at the dealership, some may call the manufacturer's toll free phone number and talk to a customer service representative. But under the bill, that's no longer enough.

The onus would be on the consumer to find out they now have a new duty to also notify the manufacturer in writing and to provide specific information, including the VIN and a summary about the problems and a demand for a refund or replacement. If they don't do all of that, the manufacturer will know it can ignore unhappy consumers' complaints and thereby cut their warranty costs significantly by limiting compliance to the relatively small universe of lemon owners that give them a specific written notice.

This would unfairly discriminate against people who are less sophisticated, more trusting, more economically vulnerable, lack legal counsel, are not proficient in written English, and lack access to the internet, but have seriously defective vehicles.

In order to avail themselves of these revamped procedures, manufacturers need to prominently display the appropriate email and mailing address for the above notices on their website and provide this notice information on their website, owner's manual, and warranty booklet in both English and Spanish.

The bill provides that no action can be maintained if the manufacturer makes an offer of restitution or replacement within 30 days of the notice, plus reasonable attorneys' fees and costs, as provided, and such replacement or restitution is completed within 60 days.

The bill imposes a requirement that the consumer have possession of the vehicle at the time of the notice and maintain it for at least 30 days thereafter. If replacement or restitution is offered in a timely manner, the consumer must maintain possession the additional 30 days. Concerns have been raised about situations where a consumer may try to get rid of their defective vehicle beforehand in order to move on, which would jeopardize their ability to seek the specific remedies of Section 1794(c).

Notwithstanding the above, a consumer can bring an action against a manufacturer without first providing the above notice, but must have possession and cannot seek civil

penalties, unless and until the appropriate notice is provided and the manufacturer fails to properly provide timely restitution or replacement.

The sponsors of the bill, General Motors and the Consumer Attorneys of California, explain:

AB 1755 provides options for consumers by allowing them to either: (1) immediately file their suit, without any pre-litigation notice, if they are simply seeking to be made whole by asking for replacement or repurchase of their vehicle and attorney's fees; or (2) provide notice to the vehicle manufacturer by email or certified mail if the consumer is seeking penalties for a manufacturer's willful failure to repurchase or replace a defective vehicle. With option 2, the manufacturer would have 30 days to respond to that notice, and if a vehicle repurchase or replacement is offered, then a total of 60 days is given in which to complete the process and provide the customer the relief they are requesting. If no valid offer is made within 30 days of notice or no remedy is completed within the allotted 60 days, the consumer can file suit in court. This new time period would provide far faster relief for affected consumers than the current practice, which has no specific deadlines outlined in statute.

In addition, to ensure that affected vehicles are removed from our state's roads and properly branded as lemons, AB 1755 would require that consumers must have possession of their vehicle either when they give notice, or when they file suit. Consumers will have one year after the expiration of the applicable warranty to bring their suit, and up to six years to do so after the date of delivery of the vehicle.

To avoid issues with regard to pre-litigation fees, any related prelitigation fee dispute is required to be resolved by binding arbitration, as provided.

The bill also specifies a standardized release for Song-Beverly Act claims that can be used by parties, with respect to the specific remedies identified in the bill. This will arguably avoid costly litigation time while the parties negotiate the terms of such a release. It should be noted that the release does provide for the release of the defendant from all claims relating the purchase, lease, condition, use, or repair of the vehicle, including but not limited to, the claims outlined in the bill.

The bill requires that consumers both comply in good faith with reasonable requests for documentation and to otherwise act in good faith in order to comply.

To further expedite Song-Beverly claims, the bill provides for streamlined discovery procedures where the plaintiff seeks restitution or replacement of their vehicle, as specified. First, parties are required to provide initial disclosures within 60 days after

the filing of the answer or other responsive pleading, without awaiting a request, that include specified documents and information. This reflects amendments that have been agreed to and will be in print prior to the hearing, clarifying that the timeline is triggered by the filing of any responsive pleading, not simply an answer.

In addition, the parties are granted the right within 120 days of the responsive filing, to conduct truncated initial depositions, not to exceed two hours, of the plaintiff and defendant, or if not a natural person, the person most qualified to testify on the defendant's behalf, but in this latter case, the deposition shall be limited to specified topics.

Finally, the bill mandates that mediation between the plaintiff and a person with the authority to settle on behalf of the manufacturer be scheduled within 90 days of the responsive pleading and be held within 150 days with a court-appointed or private mediator, as provided. All further discovery is stayed until after such mediation is concluded.

To enforce such early litigation procedures, the court is required to issue sanctions, including monetary and evidentiary sanctions, against a party that fails to comply without good cause, as provided. Unrepresented litigants are exempted. These procedures apply to actions filed on or after January 1, 2025.

The bill also details specified offsets for the amounts owed by manufacturers and outlines the calculation and provision of attendant remedies.

The sponsors again explain:

AB 1755 will apply streamlined litigation procedures specifically to lemon law cases to set up a statutory structure aimed at securing fast case resolution and penalizing attorneys on either side who do not comply. These streamlined litigation procedures include the following:

- 60 days after a manufacturer files an answer to a complaint, a specific list of initial documents must be exchanged between the consumer and manufacturer.
- 120 days after filing the answer, the plaintiff and the manufacturer have the right to an early deposition of the plaintiff and the manufacturer's "person most knowledgeable."
- 90 days after filing the answer, early neutral mediation must be scheduled within the next 60 days.

In the event a case does not resolve using the procedures outlined above, it can continue with full, existing discovery and litigation procedures. If the parties do not comply with these procedures in good faith, mandatory

sanctions would be issued against the attorneys and could be reportable to the State Bar. For repeated violations, additional significant sanctions are provided for as recourse.

Lastly, AB 1755 provides further improvements to existing lemon law by including a statutory settlement release, applicable offsets, and a detailed process for surrendering defective vehicles – all of which will further expedite the case resolution, resulting in a faster solution for consumers that is less disruptive to daily life, allowing them to be back on the road more quickly.

It should be noted that the bill defines “applicable express warranty” as the written warranty provided by the manufacturer at the time of delivery of the subject motor vehicle, which provides coverage for the specific nonconformity at issue in the action, subject to the terms and exclusions of that warranty. Concerns have been raised about how this might affect the determination of what constitutes a “lemon” pursuant to the law where a number of vehicle issues manifest. However, the bill does not change existing law regarding repair attempts to a qualifying vehicle under more than one warranty. A consumer can still bring a single express warranty violation claim with repairs under more than one express warranty.

4. Opposition concerns

Writing in opposition, Consumers for Auto Reliability and Safety (CARS) argues the bill undermines the longstanding protections of the Song-Beverly Act by absolving manufacturers of their affirmative obligations and placing the burden on consumers, who may not be sophisticated enough to be apprised of these revamped procedures:

Instead of improving protections for California car buyers, AB 1755 would drastically weaken them. For the first time in the 54 years since the Song-Beverly Consumer Warranty Act was signed into law by then-Governor Ronald Reagan in 1970, instead of expanding and improving protections for California’s vehicle owners, AB 1755 would take them away.

The worst impacts would be felt by the vast majority of auto lemon owners who lack legal representation. Currently, most auto manufacturers make warranty repairs expeditiously without the consumer needing to send the manufacturer a formal written demand or having to file a lemon law suit.

This is because those manufacturers prioritize having satisfied customers and also because under existing law, auto manufacturers have an affirmative duty to pro-actively monitor warranty repairs and promptly provide a refund or replacement vehicle without the consumer’s having

the burden of formally notifying the manufacturer. If they willfully fail to fulfill that duty, they are subject to a potential civil penalty of up to double the consumer's damages – including the price of the lemon car.

This means that for owners of vehicles produced by auto manufacturers who choose to comply with the law, problems tend to get resolved very quickly, before they even talk to an attorney.

This obligation for manufacturers to comply with their warranties without the consumer having to take any steps other than to present the vehicle to a franchised car dealer for repairs is settled case law dating back decades. See: *Krotin v. Porsche Cars N. Am., Inc.*, 38 Cal. App. 4th 294, 303 (1995), as modified on denial of reh'g (Sept. 14, 1995):

“An automobile manufacturer need not read minds to determine which vehicles are defective; As indicated by the facts in the present case ... a district service manager from Porsche ultimately obtained copies of service records from various dealerships to prepare, as she termed it, ‘a lemon law summary analysis’; a manufacturer is capable of becoming aware of every failed repair attempt. Computerized recordkeeping at dealership service departments could easily facilitate this task, even without any direct contact from the consumer to the manufacturer or any request for replacement or reimbursement to the dealership. It is thus apparent that a manufacturer need not be ‘clairvoyant’; it need only demonstrate more initiative in honoring warranties.”

Notably, *Krotin* was issued almost 30 years ago. It is obviously even easier now for auto manufacturers to comply, given advancements in electronic communications. See also: *Luthaker v. General Motors*.

However, under AB 1755, the tables are turned on consumers, who would have a new, unprecedented burden to notify the manufacturer directly in writing and provide a list of specific information before they would have the leverage of the potential double civil penalty for willful violations of the manufacturer's warranty.

A coalition of over a dozen vehicle manufacturers, including Honda, Kia, and Volvo, writes in opposition to the bill, agreeing that reform to the lemon law is needed but asserting that the bill does not present the right approach:

AB 1755 incentivizes plaintiff's counsel to file and prolong lemon law cases so as to receive additional fees, delaying resolutions for affected customers while further straining the judiciary. The bill also unreasonably

imposes greater sanctions on manufacturers while restricting their ability to remedy issues, making it significantly worse for both consumers and manufacturers than current law.

The manufacturer coalition asserts the following:

- Further overburdens the courts by “frontloading” discovery, including disproportionate sanctions against manufacturers for failure to comply and by incentivizing motions.
- Creates an uneven playing field by allowing plaintiffs to sell their vehicle within 30 days of filing a lawsuit.
- Allows plaintiffs’ counsel to recover fees even if a lawsuit is never filed and the manufacturer is in full compliance with the law.
- Mandates binding arbitration when an agreement on those fees cannot be reached.

Countering these concerns about the burden on courts, the California Judges Association writes in support:

AB 1755 seeks to streamline civil procedure associated with lemon law cases which will have a positive impact on court congestion. Specifically, this bill proposes an accelerated litigation procedures with early exchange of discovery documents, early depositions, and neutral mediation all within the case’s first six months. In particular, the early exchange of discovery documents is an important component as courts are seeing massive numbers of motions to compel discovery documents in lemon law filings. AB 1755 provides a statutory list of documents each party must provide within the case’s first few months, thus eliminating the need for parties to file motions or for the court to conduct hearings on those motions. Additionally, the bill provides for mandatory mediation with a neutral mediator for the parties to sit down and seek resolution of the case. These two procedural steps will help address an untold number of court hearings and filings while preserving a plaintiff’s ability to have their case go to trial.

AB 1755 strikes the right balance between setting up a streamlined procedure to address lemon law cases while providing judicial discretion and ability to penalize attorneys on either side for not complying.

SUPPORT

Consumer Attorneys of California (sponsor)

General Motors (sponsor)

California Judges Association

RV Industry Association

OPPOSITION

American Honda Motor Company
Autos Drive America
BMW of North America, LLC
CALPIRG
Center for Auto Safety
Consumer Federation of America
Consumer Protection Policy Center/USD School of Law
Consumers for Auto Reliability and Safety
Housing and Economic Rights Advocates
Hyundai Motor Company
Kia Motors Corporation
Kids and Car Safety
Lucid
Mazda
Mercedes-Benz
National Association of Consumer Advocates
National Consumer Law Center
National Consumers League
North American Subaru, INC.
Porsche Cars North America
Public Counsel
Rise Economy
Safety Research and Strategies
Strategic Legal Practices
Toyota Motor North America, INC.
Trauma Foundation
Tesla
Volkswagen of America
Volvo Group North America

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

[As this bill was gut and amended on August 20, 2024, the prior votes are not relevant.]
