Date of Hearing: August 30, 2024

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1755 Kalra – As Amended August 26, 2024

FOR CONCURRENCE

SUBJECT: CIVIL ACTIONS: RESTITUTION FOR OR REPLACEMENT OF A NEW MOTOR VEHICLE

KEY ISSUE: SHOULD NEW CIVIL PROCEDURES FOR LEMON LAW CASES FILED PURSUANT TO THE SONG-BEVERLY CONSUMER WARRANTY ACT BE ADOPTED IN ORDER TO PROMOTE EARLY DISPUTE RESOLUTION, CLARIFY DISCOVERY RULES, AND ENSURE TIMELY ADHERENCE TO SETTLEMENT AGREEMENTS?

SYNOPSIS

Since the 1970s, the Song-Beverly Consumer Warranty Act has protected California consumers from defective products. In conjunction with the lesser-known Tanner Consumer Protection Act, these two statutory schemes comprise California's "lemon laws," a set of legal protections for car buyers in the event that a new motor vehicle proves to be defective. Pursuant to California's lemon laws, a vehicle manufacturer has a legal obligation to repurchase or replace a vehicle with a defect that cannot be remedied after a reasonable number of repair attempts. In the event an auto manufacturer does not comply with the obligation a consumer can take the company to court and seek a variety of legal remedies including civil penalties.

Since the lifting of the COVID-19 related emergency procedures governing California's civil litigation system the number of annual lemon law filings in California courts has nearly doubled. In fact, in 2023, nearly ten percent of all civil filings in the Los Angeles County Superior Court were lemon law-related cases. The influx of lemon law litigation, and the accompanying increases in discovery disputes, dispositive motions, and protracted settlement negotiations, is resulting in growing case backlogs across the entire civil justice system. The backlogs are now delaying justice for millions of Californians.

Seeking to lessen the impact that lemon law litigation is having on California's civil justice system, this bill adopts three critical procedural reforms to the handling of lemon law disputes in California. First, this measure adopts prelitigation notice and procedural requirements for consumers who wish to seek civil penalties in an eventual legal dispute. The prelitigation procedures help ensure that manufacturers are aware of a consumer's desire to have a defective vehicle repurchased or replaced; it also imposes a set timeline on manufacturers to follow through on their obligations to repurchase or replace the vehicle. These procedures are designed to prevent many lemon law disputes from ever having to go to court. Secondly, for cases that do reach the civil justice system, this bill adopts a set of streamlined discovery processes to ensure that the information most relevant to a lemon law case is disclosed early in the litigation process and without the need to argue costly discovery disputes before the court. Seeking to ensure that attorneys faithfully adhere to these new discovery rules, the bill proposes sanctions on attorneys who violate the provisions of this bill. Finally, the bill seeks to expedite lemon law settlements by adopting a uniform legal release of lemon law claims, clarifying the calculations for vehicle

restitution payments, and imposing timelines on manufacturers to carry out their obligations under a settlement agreement.

This measure reflects a compromise between some attorneys representing consumers with lemon vehicles and some auto manufacturers, most notably the Consumer Attorneys of California and General Motors. The bill is also supported by California judges, representatives of the defense bar, and the other members of America's "Big Three" auto manufacturers. The proponents of this measure note that this bill strikes a balance between helping consumers remedy their lemon law disputes in a timely manner, providing legal certainty for auto manufacturers, and relieving burdens on California courts. The bill is opposed by some consumer advocates who contend that the bill weakens the existing lemon law statutes and harms consumers. The measure is also opposed by some auto manufacturers, including Toyota and Volkswagen, who contend that the bill is too friendly to trial attorneys and will not remedy all of the deficiencies in the lemon law as it exists today. It should be noted that in conversations with the Committee, the auto manufacturers who opposed this measure did not have tangible alternative suggestions for remedying the impact of lemon law litigation on the courts.

SUMMARY: Provides clear procedures for addressing disputes between consumers and automobile manufacturers related to California's lemon law statutes. Specifically, **this bill**:

1) Provides that cases seeking to adjudicate a dispute for restitution or replacement pursuant to the Song-Beverly Consumer Warranty Act and the Tanner Consumer Protection Act must be filed within one year of the expiration of an applicable express warranty and in all cases must be filed within six years of the date of original delivery of the motor vehicle.

2) Tolls the statute of limitations for filing a lemon law case for the pendency of the following:

    a) When an auto manufacturer and consumer are seeking resolution through a qualified third-party dispute resolution process as provided in the Tanner Consumer Protection Act;

    b) For the time the motor vehicle is out of service by reason of repair for any nonconformity; and

    c) For the time period after a pre-suit notice is provided to the manufacturer in accordance with 4), which is not to exceed 60 days.

3) Requires a consumer, at least 30 days prior to the commencement of a civil action seeking civil penalties pursuant to the Song-Beverly Consumer Warranty Act, to do the following:

    a) Notify the manufacturer of the consumer's name, the accurate Vehicle Identification Number (VIN) of the motor vehicle, and a brief summary of the repair history and problems with the motor vehicle; and

    b) Demand that the manufacturer repurchase or replace the motor vehicle.

4) Requires the notice specified in 3) to be in writing and be 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. Requires the notice information on the

manufacturer's website, owner's manual, and warranty booklet, and that the information be provided in both English and Spanish.

5) Requires a consumer to have possession of the vehicle at the time the consumer transmits the notice required by 3).

6) Provides that minor deviations in the notice submitted pursuant to 3) does not disqualify a consumer from seeking civil penalties.

7) Prohibits an action seeking civil penalties pursuant to the Song-Beverly Consumer Warranty Act if both of the following conditions are present:

   a) Within 30 days after receipt of the notice specified in 3), the manufacturer makes an offer of restitution or replacement of the motor vehicle for the amounts specified in 22) through 27), plus reasonable attorneys' fees and costs, if the consumer is represented by an attorney; and

   b) The motor vehicle replacement or restitution is completed within 60 days from the date of receipt of the original notice.

8) Requires a 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.

9) Requires pre-litigation disputes related to attorney's fees and costs to be resolved by neutral, binding arbitration, and provides that such a dispute is not, by itself, sufficient basis to show that the manufacturer's offer is out of compliance with the provisions of 3) through 7).

10) Requires a consumer to maintain possession of the motor vehicle for at least 30 days after the manufacturer's receipt of written notice seeking restitution or replacement, and for at least 60 days after manufacturer's receipt of the consumer's notice if the manufacturer offers restitution or replacement of the motor vehicle.

11) Provides that, notwithstanding 10), if the manufacturer does not offer restitution or replacement of the motor vehicle within 30 days of receiving the consumer's notice, the consumer is permitted to sell their motor vehicle and seek remedies, including, but not limited to, civil penalties authorized by the Song-Beverly Consumer Warranty Act.

12) Provides that, notwithstanding 3), a consumer may file an action seeking restitution or replacement of a motor vehicle so long as the consumer has possession of the motor vehicle at the time of the filing of the complaint and civil penalties are not sought.

13) Prohibits any remedy provided by the bill from being contingent on the execution of any release other than the statutorily prescribed "Standardized SBA Release," as specified.

14) Provides the following discovery procedures for civil actions commenced seeking restitution or replacement of a motor vehicle pursuant to 1):

   a) Within 60 days after the filing of the answer or other responsive pleading, all parties must, without awaiting a discovery request, provide to all other parties an initial disclosure and the documents specified in 15) and 16);

b) Within 120 days after the filing of the answer or other responsive pleading, all parties have the right to conduct initial depositions, each not to exceed two hours, of the plaintiff and the defendant, as specified;

c) Within 90 days after filing of the answer or other responsive pleading, all parties must schedule a mediation to occur within 150 days after filing of the answer or other responsive pleading with a court-appointed or private mediator, as specified; and

d) All other discovery except those described in a) and b) are to be stayed until the conclusion of the mediation provided in c).

15) Requires, in accordance with the discovery procedure specified in 14), the plaintiff to disclose the following:

a) The sales or lease agreement;

b) A copy of the current vehicle registration;

c) Any finance information, account information, including payment history and estimated payoff amount and any loan modification agreements;

d) Any repair orders, including to third-party repair facilities or the location of where information relating to repair orders may be found;

e) All documents detailing all underlying claimed incidental damages;

f) Any information pertaining to the market value of the motor vehicle that is currently in the consumer's possession;

g) Any written, pre-suit communications with the manufacturer, including, but not limited to, any restitution or replacement request;

h) The mileage of the motor vehicle as of the date of the disclosure described in a) of 14);

i) The primary driver or drivers of the motor vehicle;

j) If the motor vehicle is primarily used for a business purpose, whether more than five vehicles are registered to the business;

k) Whether the plaintiff is still in possession of the motor vehicle;

l) The address where the motor vehicle is located;

m) Whether the plaintiff is an active or prior member of the armed forces;

n) Whether the motor vehicle has been involved in a collision or accident reported to insurance prior to the nonconformity, and if so, the approximate date of the collision, the name of the insurance company, and any applicable claim number;

o) Whether the motor vehicle has any aftermarket modifications done after purchase of the motor vehicle, and if so, a list of each modification;

p) The dates and mileages for presentations that are not included in the provided repair orders or the location of where the information may be found; and

q) Any need for an interpreter for purposes of a deposition.

16) Requires, in accordance with the discovery procedure specified in 14), the defendant or manufacturer to disclose the following:

a) A copy of or access to a version of the owner's manual for a motor vehicle of the same make, model and year;

b) Any warranties issued in conjunction with the sale of the motor vehicle;

c) Sample brochures published for the motor vehicle;

d) The motor vehicle's original invoice, if any, to the selling dealer;

e) The sales or lease agreement, if the manufacturer is in possession;

f) Any motor vehicle information reports, including build documentation, component information, and delivery details;

g) The entire warranty transaction history for the motor vehicle;

h) A listing of required field actions applicable to the motor vehicle;

i) Any published technical service bulletins (TSBs) for the same make, model and year reasonably related to the nonconformities pertaining to the motor vehicle;

j) Any published information service bulletins (ISBs) for the same make, model and year reasonably related to the nonconformities pertaining to the motor vehicle;

k) All records relating to communications between the manufacturer or dealership and the owner or lessee of the motor vehicle, including those related to repair orders or claims involving the motor vehicle;

l) The manufacturer's warranty policies and procedure manuals;

m) All service manuals reasonably related to the nonconformities pertaining to the motor vehicle;

n) If a pre-suit restitution or replacement request is made, all call recordings of pre-suit communications with the consumer available at the time of service of the complaint;

o) If a pre-suit restitution or replacement request is made, the manufacturer's written statement of policies and procedures used to evaluate customer requests for restitution or replacement pursuant to "Lemon Law" claims;

p) If a pre-suit restitution or replacement request is made, any non-privileged, pre-litigation evaluation; and

q) Any warranty extensions or modifications issued by the manufacturer on the motor vehicle.

17) Provides that for the purposes of the depositions authorized pursuant to b) of 14), if the defendant is not a natural person, the initial deposition of the person who is most qualified to testify on the defendant's behalf is to be limited to the following topics:

a) All warranties that accompanied the plaintiff's motor vehicle at the time of purchase or lease;

b) Questions relating to the nature and extent of the entire service history, warranty history, and repairs relating to the motor vehicle;

c) Questions relating to recalls applicable to the motor vehicle;

d) Questions relating to a reasonable number of Technical Service Bulletins or Information Service Bulletins reasonably related to the nonconformities pertaining to the motor vehicle;

e) Questions relating to relevant diagnostic procedures consulted and followed while diagnosing the plaintiff's concerns for the motor vehicle;

f) Questions relating to relevant repair procedures consulted and followed during the repairs for the motor vehicle;

g) Questions relating to relevant communications between the plaintiff and defendant regarding the motor vehicle;

h) Questions relating to relevant communications between the defendant and any dealership or other third parties regarding the motor vehicle;

i) If a pre-suit restitution or replacement request was made, questions relating to why the defendant did not replace the motor vehicle or provide restitution;

j) If a pre-suit restitution or replacement request was made, any non-privileged evaluation prepared by manufacturer; and

k) If a pre-suit restitution or replacement request was made, the manufacturer's policies and procedures regarding the restitution or replacement of vehicles in response to a consumer's request for restitution or replacement under the Song-Beverly Consumer Warranty Act, in effect from date of the notice of the consumer's request for restitution or replacement of the vehicle to the present, and any changes thereto.

18) Requires, absent a showing of good cause, the court to impose sanctions on a party failing to comply with the provisions of 14) through 17) as follows:

a) A one-thousand-five-hundred-dollar ($1,500) sanction against the plaintiff's attorney or two-thousand-five-hundred-dollar ($2,500) sanction against the defense attorney respectively, paid within 15 business days for failure to comply with the document production requirements;

b) A one-thousand-five-hundred-dollar ($1,500) sanction against the plaintiff's attorney or two-thousand-five-hundred-dollar ($2,500) sanction against the defense attorney respectively, paid within 15 business days for failure to comply with the provisions relating to depositions;

c) For a plaintiff's repeated noncompliance with 14) order the case dismissed without prejudice and the plaintiff's attorney to be responsible for costs awarded to manufacturer; and

d) For a manufacturer's or defendant's repeated noncompliance with 14) order that evidentiary sanctions attach precluding the manufacturer or defendant from introducing evidence at trial regarding whether the motor vehicle had a nonconformity that substantially impaired the use, value or safety of the motor vehicle, or whether the motor vehicle was repaired to match the written warranty after a reasonable number of opportunities to do so.

19) Authorizes a court to require an attorney sanctioned pursuant to 18) to notify the State Bar of California of the sanctions within 30 days.

20) Provides that the provisions of 14) through 19) do not apply to any party that is not represented by legal counsel.

21) Provides that the provisions of 14) through 19) only applies to actions filed after January 1, 2025.

22) Provides that for the purpose of calculating the value of restitution related to a motor vehicle the defendant is entitled to an offset in the calculation of the actual price paid or payable for optional equipment, service contracts, or guaranteed asset protection (GAP) financing purchased by the plaintiff during the motor vehicle purchase or lease transaction from third parties, except for optional purchases for dealer-supplied equipment or services.

23) Provides that optional equipment and accessories, theft-deterrent devices, surface-protection products, service contracts, extended warranties, debt-cancellation agreements, and GAP financing supplied by a third party that is not the selling or leasing dealership or an authorized retail facility for the original equipment manufacturer are not recoverable as damages unless the foregoing constitute dealer additions supplied by the selling or leasing dealership or an authorized retail facility for the manufacturer.

24) Provides that for the purpose of calculating the value of restitution related to a motor vehicle a defendant is entitled to an offset for negative equity incorporated in the transaction from prior vehicles.

25) Provides that for the purpose of calculating the value of restitution related to a motor vehicle non-cash credits provided by the manufacturer as a form of down-payment assistance, typically referred to as a manufacturer's rebate, are not be included in the calculation of the actual price paid or payable and are not be used to reduce the amount of any negative equity offset.

26) Provides that for leases, damages and civil penalties are to be calculated as follows:

a) Amounts paid or payable by the consumer under an existing agreement to extend a lease term are to be allowable as damages;

b) Amounts paid by the consumer for the residual value shall be allowable as damages, as specified;

c) Amounts paid or payable by the consumer to extend a lease term are to be included in civil penalty calculations if paid for or the lease extension is activated by the consumer no later than 30 days after delivering pre-suit notice or filing a lawsuit, whichever is earlier;

d) Amounts paid by the consumer for the residual value are only to be included in civil penalty calculations if paid for or financed by the consumer no later than 30 days after delivering pre-suit notice or filing a lawsuit, whichever is earlier; and

e) The residual value is not be included in civil penalty calculations if not paid or financed by the consumer.

27) Provides that, in calculating the value of restitution related to a motor vehicle, the defendant is not responsible for payment of unpaid interest or unpaid financing costs associated with the retail installment sales contract that will not be owed or paid by the consumer when the lien is paid off.

28) Requires restitution payment and vehicle return procedures to comply with the following:

a) A remedy cannot be contingent on the execution of any release other than the "Standardized SBA Release";

b) The defendant must promptly process any agreed-upon motor vehicle restitution or replacement pursuant to this section and complete the restitution or replacement within 30 days from the date of receipt of a signed release from the buyer or lessee's counsel, as specified; and

c) The defendant must provide the consumer with the funds containing their restitution proceeds at the time of the vehicle return, as specified.

29) Defines the following terms:

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) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods or motor vehicles;

c) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods or motor vehicles.

d) "Motor vehicle" means a motor home, new motor vehicle, or travel trailer, as specified.

e) "Warrantor" means any entity or person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

30) Provides that the duties and obligations imposed by this bill are cumulative with duties or obligations imposed under any other law and are not be construed to relieve any party from any duties or obligations imposed under any other law.

EXISTING LAW:

1) Establishes the Song-Beverly Consumer Warranty Act, and provides that any waiver of the provisions of the Act is to be deemed contrary to public policy and be unenforceable and void, unless otherwise specified. (Civil Code Section 1790 *et seq.*)

2) Provides that, except as specified, every sale of consumer goods that are available for purchase by the public in this state are to be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are suitable for sale. (Civil Code Section 1792.)

3) Defines, for the purpose of the Song-Beverly Consumer Warranty Act, "express warranty" to mean either of the following:

   a) A written statement arising out of a sale to the consumer of a consumer good that 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; or

   b) In the event of any sample or model, that the whole of the goods conforms to the sample or model. (Civil Code Section 1791.2 (a).)

4) Requires that, if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity. (Civil Code Section 1792 (d).)

5) Provides that, except as specified, existing state laws do 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. (Civil Code Section 1793.)

6) Establishes the Tanner Consumer Protection Act to govern warranties for new motor vehicles. (Civil Code Section 1793.22(a).)

7) Presumes, for the purpose of the Tanner Consumer Protection 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; or

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. (*Ibid*.)

8) Defines, for the purpose of 7), "nonconformity" to mean a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee. (Civil Code Section 1793.22 (e)(1).)

9) Defines a "new motor vehicle" to mean any of the following:

a) A new motor vehicle that is bought or used primarily for personal, family, or household purposes;

b) 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 five motor are registered in this state; and

c) New motor vehicle includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways, as specified. (Civil Code Section 1793.22 (e)(2).)

10) 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 of the motor vehicle, that a buyer or lessee who is a resident of this state agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition; or

b) Including, in any release or other agreement, whether prepared by the manufacturer, importer, distributor, dealer, or lienholder, 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. (Civil Code Section 1793.26 (a).)

11) Provides that any confidentiality clause, gag clause, or similar clause 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. (Civil Code Section 1793.26 (b).)

12) 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 Consumer Protection 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. (Civil Code Section 1794 (a).)

13) Authorizes, if the buyer establishes that the failure to comply the Song-Beverly Consumer Warranty Act, the Tanner Consumer Protection Act, or under an implied or express warranty or service contract was willful, the judgment specified in 12) may include, in addition to the amounts recovered, a civil penalty not exceed two times the amount of actual damages. (Civil Code Section 1794 (b).)

14) Provides that if a buyer prevails in an action brought pursuant to 12) and 13), 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. (Civil Code Section 1794 (c).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: In the years since the court's COVID-19 emergency procedures were lifted, California has seen a dramatic increase in the number filings litigating California's lemon law statutes in its courts. Between 2022 and 2023, the number of lemon law case filings in California courts nearly doubled from 14,892 filings in 2022 to 22,655 filings in 2023. Indeed, according to the California Judges Association, nearly ten percent of all civil filings in Los Angeles County are now related to lemon law disputes. As a result of the massive increase in lemon law cases, Californians seeking to adjudicate their claims related to defective motor vehicles (and other civil disputes) are now waiting years to get their day in court. Furthermore, auto manufacturers are now facing an unprecedented level of legal uncertainty. Seeking to ensure that lemon law disputes can be resolved in a timely manner, this measure makes modest procedural changes to the laws governing lemon law disputes. This bill seeks to promote early out-of-court resolution of lemon law claims, reduce discovery clashes and promote mediation for disputes that do make it to court, and ensure that settlement agreements between consumers and auto manufacturers are effectuated in a timely manner. In support of this important measure to preserve the fundamentals of California's lemon law statute, the author states:

> 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 logjam 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 processes 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.

California's lemon law statutes provide critical consumer protections. The Song-Beverly Act sets forth standards for warranties that govern consumer goods and outlines remedies available to purchasers. Under the Song-Beverly Act, every manufacturer of consumer goods sold in this state for which the manufacturer has made an express warranty is required to, among other things, replace the warrantied goods or reimburse the buyer if the manufacturer does not service or repair the goods to conform to the express warranties after a reasonable number of attempts.

The Tanner Act, found within the Song-Beverly Act, applies specifically to new motor vehicles and provides consumers with an additional protection by allowing them to choose whether they want restitution or replacement of a new vehicle if the manufacturer does not service or repair the goods to conform to their express warranties after a reasonable number of attempts, typically two to four. Applicable case law clarifies the manufacturer's duty under the Tanner Act by holding that, "the Act creates an affirmative duty on the manufacturer or its representative to provide restitution or replacement when a covered defect … is not repaired." (*Krotin v. Porsche Car North America, Inc.* (1995) 38 Cal. App. 4th 294, 302.) This duty attaches upon the failure of the last reasonable repair attempt, whether or not the consumer has requested replacement or restitution.

Although the manufacturer has an affirmative obligation to remedy a lemon, generally the consumer contacts the manufacturer prior to ligation and requests a buy back or replacement. Upon receiving a notice or other communication from a customer in which a replacement or buy back is requested, a manufacturer is obligated to repurchase any vehicle that is truly a lemon. Seeking to expedite this process, the existing law provides that a manufacturer's willful failure to repurchase a vehicle that is a lemon exposes a manufacturer to civil penalties in addition to the cost of the vehicle itself, costs associated with the inoperable vehicle, and reasonable attorney's fees. However, the significant quantity of litigation surrounding lemon laws in California highlights the fact that the current statutory framework is insufficient to compel auto manufacturers to make right by consumers with defective automobiles on their own volition.

Recent increases in lemon law litigation are overwhelming California's courts. In 2015, court records indicate that there were 4,500 lemon law related cases filed across California. In 2023 that number grew to nearly 23,000 filings. Each additional lemon law filing represents new motion hearings, status conferences, and other actions by the court that necessitate time on a judge's calendars. As a result of the increase in filings, lemon law cases are being severely delayed, thus limiting Californian's ability to seek redress for defective cars. Furthermore, the spillover impact from the increased lemon law filings is now causing the general backlog for civil cases to grow once more even after the successful deployment of technology during the pandemic to reduce civil case backlogs. Given that California's courts are projecting that upward of 30,000 lemon law cases are likely to be filed by the end of 2024, if action is not taken to

streamline the adjudication of these disputes, lemon law filings are poised to cripple the entirety of California's civil justice system.

This bill seeks to make three primary improvements to the lemon law dispute resolution process. As noted above, this bill seeks to expedite the resolution of lemon law cases and prevent many disputes from ever needing to go to court. This measure seeks to accomplish these goals in three primary ways: (1) improving prelitigation notices and procedures; (2) promoting early mediation and streamlined discovery should a suit be filed; and (3) adopting consumer protections to incentivize expeditious compliance with any settlement agreement.

Seeking to prevent lemon law disputes from ever making it to court, this bill enhances prelitigation notices and procedures. First, the bill requires a consumer to notify a manufacturer of their request to seek a buy-back in writing if the consumer wishes to seek civil penalties for a refusal to comply with the existing law's buy-back provisions. Additionally, the bill requires a manufacturer to communicate their intentions to a consumer within 30 days of receiving the written notice and complete the transaction within 60 days. In order to ensure that lemons are removed from California's roads, the bill requires a consumer to maintain possession of the vehicle during this 60-day period. The bill also clarifies that lemon law civil actions must be filed within one year of the expiration of an applicable warranty and no later than six years from the date of the vehicle's delivery.

In the event that a lemon law case is filed in court, this measure also seeks to expedite its resolution. The bill adopts new discovery timelines, ensures early depositions, and mandates that consumers are fully aware of the status of their case. The bill also outlines clear formulas for calculating restitution payments to consumers, including how to offset special financing offers and calculate the value of negative equity associated with carrying over a loan balance from a prior vehicle purchase. Finally, this bill adopts consumer-friendly expedited settlement procedures to ensure that once a consumer and manufacturer reach an agreement related to a defective vehicle, the consumer is made whole in a timely manner. For the first time in the history of California's lemon law, this bill imposes financial penalties upon manufacturers who fail to follow-up on their promise buy-back or replace a lemon in a timely manner.

The prelitigation procedures proposed by this bill do not alter California's fundamental consumer rights. The first reform to the existing lemon law process is the adoption of prelitigation procedures for customers who may eventually seek civil penalties in court. Under existing law, the manufacturer's affirmative duty to provide restitution or replacement of a vehicle attaches as soon as the last reasonable opportunity to repair the vehicle has failed. (*Krotin v. Porsche Car North America, Inc., supra.*) Although the statute is silent, case law implies that manufacturers should proactively reach out to consumers with lemons. However, as the *Krotin* court noted there is a, "disparity between the law as written and the reality as it appears in the service department of a dealership." (*Id.*, at p. 303.) Accordingly, reality shows that most consumers are presently requesting restitution or replacement before a manufacturer begins to contemplate replacing or buying back a lemon.

Recognizing this reality, if a consumer wishes to seek civil penalties, this bill would now require a customer to request to restitution or replacement in writing. The transmission of the writing, which by the terms of the bill can be as simple as an e-mail, triggers a 30-day clock for the manufacturer to agree to the restitution or replacement of the vehicle or contest the vehicle's status as a lemon. If a manufacturer contests the vehicle's status or simply does not respond, a

consumer may proceed to court. If the manufacturer agrees to restitution or replacement, the manufacturer then has 60 days from the date of the request to replace or refund the vehicle. Although the bill now requires a consumer to maintain possession of the vehicle during this timeline, this provisions actually ensures that unsafe or unreliable vehicles can be removed from the road and are not sold to a used car dealership and eventually returned to California's roadways.

Although the written notice requirement is new and only applies in limited cases, the requirement is generally in keeping with existing customs. Furthermore, as noted, nothing in the prelitigation procedures impacts the underlying consumer rights guaranteed in the Song-Beverly Act. These procedures do not alter reasonable repair requirements, they do not alleviate a manufacturer of its duty to conform vehicles to their warranty, and do not alter the mandate that defective vehicles must be replaced or refunded. Indeed, in accordance with existing case law, collateral charges and incidental fees begin to accrue for recovery immediately after the last failed repair. (*Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal. 5th 966.) Nothing in this bill impacts the accrual of these damages. Furthermore, it should be noted that should a consumer only seek restitution or replacement of their vehicle, and not civil penalties, no notice is necessary and they may proceed directly to court. The prelitigation procedures proposed in this bill simply exist to offer consumers and manufacturers a path to resolve their lemon law related dispute out of court.

The expedited discovery provisions of this measure will reduce protracted discovery disputes. Discovery disputes, most notably arguments over what must be turned over to opposing parties in litigation, is one of the largest drivers in delays in almost every type of civil litigation. Lemon law litigation is no different. Presently, parties squabble over what maintenance records are to be disclosed, what warranty documents must be disclosed, and how depositions can be conducted. Every time one of these disputes arises, the court is forced to calendar a motion hearing and delay a potential trial. Given that lemon law cases are typically very document-heavy matters and involve a limited universe of documents, many of these discovery disputes represent little more than unnecessary litigation tactics that only serve to delay justice.

Recognizing that litigating futile discovery motions can significantly prolong relatively simple lemon law cases, this bill seeks to streamline discovery in lemon law actions. The bill mandates that specified documents--those most associated with lemon law claims including maintenance records and warranties--be disclosed to the opposing party within 60 days of a defendant answering or otherwise responding to a complaint. Additionally, a scope-limited deposition must be taken of the plaintiff and representative of the defendant within 120 days of the defendant's response to the complaint. Finally, seeking early out-of-court resolution, the bill mandates mediation take place within the first 150 days of the action.

As noted, the bill specifies a range of lemon law related documents that must be disclosed. While some opponents contend that this bill forces parties to take on an unnecessary burden of producing documents quickly, in reality, the bill calls for the timely disclosure of documents all parties should readily have in their possession and would certainly have to disclose after a protracted discovery dispute. Accordingly, this bill is focused on expediting discovery, reducing needless discovery disputes, and promoting mediation to resolve claims in a timely manner without overburdening either party to the case.

This bill ensures that consumers can be made whole in a timely manner. The third reform proposed by this measure seeks to expedite settlements once an agreement regarding an automobile's lemon status has been reached. The first important aspect of this measure is the statutorily provided calculation for determining a vehicle's restitution value. Seeking to eliminate some of the disagreements that delay case disposition, this bill seeks to clarify which "add-ons" are part of the vehicle price and which are not. Under the bill, the restitution formula states that optional features that "constitute dealer additions" are to be included in the price while all other optional additions are not. For example, if a dealership installs a roof-mounted storage rack on an SUV and builds the cost of the storage rack into the price of the car, that would be considered a "dealer addition" as the dealer installed the feature and essentially let the consumer take it or not purchase the vehicle. Conversely, if a dealership offers to add window tinting or rustproofing to be added *after* the vehicle is purchased, this would not be counted in the restitution price as the consumer could opt to deny the addition and still purchase the vehicle. Thus, the bill seeks to count as part of the vehicle's price those additions a consumer essentially has no choice but to purchase and discounts truly voluntary additions. The bill seeks to make analogous calculations for leased vehicles.

Similarly, the bill seeks to statutorily prescribe how to calculate dealer incentives and other financial incentives. One area in which the parties sponsoring this measure reached compromise is the bill's requirement that negative equity is not incorporated into the sales price. Negative equity is essentially money added to one automobile loan to pay off another. The proponents note that making a manufacturer compensate a consumer for negative equity would essentially force one manufacturer to pay for a loan taken out to buy an automobile from another manufacturer. Recognizing that adding negative equity to an auto loan is essentially a financial decision made by a consumer who wants a new vehicle, it seems reasonable to not force a manufacturer to compensate a consumer for these costs.

Finally, seeking to ensure that consumers are made whole as quickly as possible, this bill requires that a consumer be provided with a replacement vehicle or a check at the time they remit their lemon to the manufacturer. The bill imposes $50 per day penalties on auto manufacturers who delay in compensating a consumer. Some opponents, including the Consumers for Auto Reliability and Safety, contend the new penalty level is insufficient to ensure compliance. However, it should be noted that existing law provides *no penalties* when a manufacturer delays in compensating a consumer who returns a lemon. Accordingly, while the penalty amount may need to be adjusted, should $50 provide insufficient, the bill provides far greater incentives for compliance than existing law does.

Despite opposition claims, this bill does not invalidate automobile warranties. As noted, this bill enacts a statute of limitations on lemon law claims of one year after the expiration of applicable express warranties, or six years from the date of delivery of the vehicle. Several stakeholders have expressed concerns about how these provisions would impact long-term warranties, especially those for electric vehicle batteries. Indeed, Strategic Legal Practices, APC, a plaintiff-side lemon law firm, is concerned that, "AB 1755 effectively nullifies 10-year emission warranties and 8 to 10-year electric vehicle battery warranties after just 6 years, because claims would not be able to be brought more than 6 years after delivery of the vehicle."

While this statement is true as to utilizing the lemon law statutes to seek redress for extended warranties, the statement ignores the fact that the bill does nothing to impact the underlying warranty contract. To distinguish this point, it should be noted that while this bill does limit

restitution or replacement as a remedy to six years after a vehicle is delivered to a consumer, nothing in the bill prevents a consumer from bring a lawsuit rooted in contract law to seek performance of the warranty agreement itself. For example, should an electric vehicle subject to a ten-year battery warrant experience a battery failure seven years after a purchase, pursuant to both existing law and this bill the manufacturer is obligated to repair or replace the battery so that the vehicle conforms to the warranty. If the warranty contemplates the replacement of the entire electric vehicle, nothing in this measure would alleviate that burden on the manufacturer. If for any reason a manufacturer refuses or otherwise fails to adhere to the terms of the warranty agreement, they can be sued for breach of contract and a plaintiff would be entitled to economic damages, fees and costs, and all other remedies offered by contract law. Thus, statements indicating that the bill "nullifies" warranties appears to be an overstatement.

Similarly, the bill does not explicitly limit lemon law cases to the statute of limitations of the first warranty. As the opposition correctly states, warranty periods can vary and lemon law cases can be made by merging defects across various warranties. Should a specific issue arise with one component of a vehicle, it's clear which warranty would apply. However, if a vehicle has multiple issues across different parts or systems covered by various warranties, the bill does not preclude the timeline of the last applicable warranty from applying. Accordingly, given that most automobile warranties range between 36 and 60 months, this bill's six-year overall statute of limitations should cover most warranties. Only truly extended warranties would be implicated by scenarios such as the electric vehicle battery scenario described above, which as noted maintain all existing remedies under contract law.

Finally, by its own terms, this measure only applies to a "warranty provided by the manufacturer at the time of delivery of the subject motor vehicle." The bill does not apply to any subsequent maintenance certificate or other warranty provided *after* the sale and delivery of a vehicle. Thus, warranties that may be given to extend prior warranties are outside the scope of the statute of limitations contemplated by this measure.

Some stakeholders worry that this bill will negatively impact the courts and exacerbate discovery disputes; however, California's judicial officers believe the bill will benefit the courts and reduce civil litigation backlogs. As discussed above, a critical component of this measure is the adoption of streamlined discovery rules governing lemon law cases in the first 150 days after the defendant files an answer or other responsive pleading. Interestingly, some of the plaintiff's attorneys who oppose this measure and the handful of auto manufacturers opposing this measure both oppose these provisions, but contend they will have diametrically opposing impacts. For example, the plaintiff's firm, Strategic Legal Practices, APC, wrote to this Committee contending that the new streamlined discovery rules will likely be disputed and are, "ripe for exploitation by manufacturers, who will be filing demurrers, motions to strike, etc., simply for the purpose of delay." Ironically, the coalition of primarily foreign auto manufacturers opposing this measure contend the very same discovery provisions will, "create more opportunities for plaintiffs to generate fees by filing a slew of motions for even the most minor or unintentional compliance errors."

In light of the diverging views of the opposition coalition, it is difficult to reconcile how each side can believe the same statutory language is so skewed in favor of their opponents in such different ways to merit opposing this measure. When examining the text of the bill itself, the legislation simply provides timelines and guidelines regarding what information must be disclosed and when. The proponents of this measure note this list of documents is designed to

lessen fights in discovery. Seeking to better discern the veracity of the opposition's claims, given that these stakeholders are all parties to lemon law litigation, one may turn to opinion of the neutral judges who adjudicate these matters to determine the merits of the new discovery procedures. Despite the opposition's stated concern about this bill's impact to the judicial branch, the California Judges Association supports this measure and writes:

> AB 1755 seeks to streamline civil procedure associated with lemon law cases which will have a positive impact on court congestion…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.

In addition to the fact that representatives of the judicial branch are either supportive of, or neutral on this measure, it should also be noted that many of the provisions in the discovery rules adopted by this bill mirror broader discovery changes adopted by last year's SB 235 (Umberg) Chap. 284, Stats. 2023, which incorporated some of Rule 26 of the Federal Rules of Civil Procedure into California law. Much like this measure, SB 235 was designed to reduce superfluous discovery disputes by providing clear rules and enhanced sanctions. Although that measure has only been in effect for one year, the litigation doomsday that the opposition to that bill predicted when it was pending in the Legislature has not manifested to date. Accordingly, it appears reasonable to surmise that this bill will follow the precedent of SB 235 and not have the negative impact that the opposition fears.

Despite stakeholder concerns, the vehicle retention provisions of this measure appear to strike a reasonable balance. As a part of the prelitigation provisions of this bill, the bill requires a consumer to keep possession of a vehicle for at least 30 days after they send notice seeking restitution or replacement. If the manufacturer does not respond or rejects the request within that time period, the consumer can sell the vehicle and proceed to court. If the parties agree to restitution or replacement, the consumer must maintain possession of the automobile until it is replaced or returned to the manufacturer, which must occur within 60 days. Yet again, some members of the plaintiff's bar and consumer advocates as well as some auto manufacturers oppose these provisions for diametrically opposite reasons.

Those representing consumers contend that it is an unfair and onerous burden for the consumer to have to possess the automobile for up to 60 days after making a request for restitution or replacement. This group of opposition presents doomsday scenarios of automobiles being totaled or burned in fires as a rationale as to why this burden is too onerous. While it is true that existing law does not require consumers to possess their vehicles to file a lemon law claim, one goal of this bill is to actually get these unsafe vehicles off the road. In the absence of the possession requirement, the car could be sold while a consumer seeks restitution and an unsuspecting third party may end up with a lemon and no resource for adjudicating the issue. Furthermore, the bill does not specify the meaning of "possession" and thus the strict interpretation of the opposition that the vehicle remain in a consumer's driveway is overstated. For example, should a consumer maintain registration with the Department of Motor Vehicles but hold the car in a repair shop or insurance company lot, this would almost certainly be deemed "possession" under the bill. Accordingly, facing the need to actually get these vehicles off the road, the 30 to 60-day possession requirement does not appear terribly onerous to the consumer.

On the other end of the spectrum, several of the auto manufactures who oppose this measure contend the possession requirement does not go far enough. A coalition of manufacturers write, "The bill codifies a plaintiff's right to dispose of the most critical piece of evidence in a lemon law case, the vehicle. This prevents an automaker from preparing a legal defense." Furthermore, the auto manufacturers want a guaranteed right to inspect the suspect vehicle. Given that existing law contains *no* vehicle retention or inspection requirement, it does not seem reasonable to say that this bill is undermining manufacturer's ability to defend themselves. Similar to the discussion of the adequacy of the $50 per day penalty for failing to adhere to a settlement in a timely manner, these provisions are new requirements that add clarity in the law. As the bill is implemented, it is possible that these timelines may need to be adjusted. However, it should be noted that this bill provides manufacturers with a guarantee that a consumer seeking redress for a lemon vehicle must retain that vehicle for 30 to 60 days longer than they are required to do under existing law. Given that this relatively minor burden on consumers helps remove problem vehicles from the roads and gives manufacturers new opportunities to reassume possession of these vehicles this compromise timeline appears reasonable.

Although somewhat unique in statute, the prelitigation fee provided under the bill mirrors existing civil litigation practice. The auto manufacturers who oppose this measure contend the bill's provisions awarding attorney's fees for prelitigation costs are unfair. A coalition letter opposing the measure states, "This legislation mandates that plaintiffs' attorneys receive fees even when a manufacturer fully complies with the Song Beverly Act by offering a timely pre-lawsuit repurchase." While true, this statement generally reflects existing practice. In fact, just because an attorney is not forced to file suit does not mean they did not do billable work for a client. Indeed, existing Code of Civil Procedure Section 1021, which outlines what constitutes allowable attorney "costs" in civil litigation, defers to the provisions of the contract between an attorney and client, unless otherwise specified by statute. Because those contracts frequently permit an attorney to bill for time spent preparing to file litigation, in practice, prelitigation costs generally are recoverable.

While settlements outside of litigation frequently require negotiation over prelitigation fees, the fees remain recoverable. This measure simply acknowledges this reality and provides for a statutorily-mandated arbitration procedure should prelitigation costs and fees be disputed in order to reduce the amount of time the parties are debating over fee disputes.

Some automobile manufacturers believe the sanctions in this measure are too one-sided; however, plaintiff's attorneys face significant penalties for unscrupulous behavior. In order to ensure that parties comply with the discovery provisions of this bill, the measure adopts a relatively strict set of sanctions for non-compliance. The coalition of auto manufacturers opposing this measure contend that:

> While AB 1755 imposes a penalty for repeated non-compliance for plaintiffs, it is merely that the case gets dismissed without prejudice. Plaintiff's might owe some court costs but could then simply refile. Plaintiffs could bypass the notice requirement, file suit, go through the motions for the initial discovery and mediation, and if they refuse to settle, would continue as now to litigate to increase fees. By contrast, the manufacturer faces severe evidentiary sanctions that would effectively prevent them from defending themselves in court.

It is true that the manufacturers face strict evidentiary sanctions for discovery violations. However, the above statement appears to understate the penalties imposed on plaintiff's counsel for violations of the discovery rules. The sanctions against plaintiff's counsel include forcing the attorney to bear all litigation costs and fees incurred by the manufacturer in litigating the dispute. Depending on when violations occur, these costs may include the cost of mediation, in addition to hundreds of hours of attorney's fees for the manufacturer's corporate counsel. While it is true that the individual consumer may not face significant recourse for discovery violations, their counsel potentially faces tens of thousands of dollars in sanctions for violating this measure. Additionally, violations of this bill's discovery may lead to reporting to and sanctions from the State Bar of California. Accordingly, while it is understandable that some manufacturers may not like the strict sanction regime imposed by this bill, the sanctions can be significant to both sides of the dispute. Given that the goal of this measure is to reduce litigation tactics that produce unnecessary delays, the strict sanctions for all parties (particularly the legal counsel) appear to be a reasonable means of furthering the goals of this measure.

Despite the contention of the opposition, the notice and mediation provisions of this measure should not disproportionately impact non-English speaking Californians. The Los Angeles Latino Chamber of Commerce, writing in opposition to the bill, claims that the bill would disproportionately impact non-English speaking consumers. They write, "Legal documents and notices are often written in complex legal language that is difficult for anyone to understand, let alone those who are not fluent in English. The bill does not ensure that these documents or the mediation process will be available in languages other than English." To a large degree, this is an accurate statement. However, it overlooks the fact that the bill expressly requires information regarding a person's warranty rights and contact information for seeking redress for a lemon to be provided in Spanish, as well as English. The Song-Beverly Act provides no such requirements; a manufacturer has no obligation to provide any documents in any non-English language. The existing law does not require call centers, or customer service representatives, to provide translation services; nor does it require that legal documents in lemon law cases are translated. In fact, by directing consumers to document their correspondence with manufacturers in writing, the bill should assist non-English speakers to resolve their lemon law disputes in a timely manner. For example, if a non-English speaking consumer were to call a manufacturer's service center today, there would be no guarantee that the manufacturer would have a translator available to speak with the consumer in their own language. Absent a translator, the consumer would have virtually no recourse to address their lemon law claim (and no way to document their attempt to do so). However, pursuant to the provisions of this bill, a consumer could send an e-mail or letter to the manufacturer in their native language and the manufacturer would be *obligated* to respond to that correspondence within 30 days, or the consumer would have the right to go to court. Facing the threat of a lawsuit, this requirement should motivate the manufacturer to obtain the translation services needed to respond to the consumer, something the manufacturer is not required or incentivized to do under existing law.

Finally, as it relates to translation services in California's court system, this Committee has long noted that the Judicial Council could and should do more to make the courts more accessible to non-English speakers, including by providing translation services in the courts. While the opposition to this bill is correct in observing that non-English speakers face difficulties navigating the judicial system, this is a problem of the status quo that has nothing to do with this bill or whether it fails or passes. To the extent that this bill helps resolves cases outside of court, it should assist non-English speakers by enabling them to avoid the court system in the first place.

ARGUMENTS IN SUPPORT*:* This measure is co-sponsored by the Consumer Attorneys of California and General Motors, and is supported by the remaining members of America's "Big Three" automakers as well as the California Judges Association, defense attorneys, and Recreational Vehicle Manufacturers. In support of the bill, the Consumer Attorneys of California and General Motors jointly write:

> California's "lemon law," found in the Song-Beverly Consumer Warranty Act, provides strong remedies for consumers who purchased vehicles that are unable to be repaired. In recent years, the number of lemon law complaints filed in California's courts has increased exponentially – there were 14,892 filings in 2022, and just one year later, there were 22,655 filings, and this year filings could hit 30,000.
>
> Altogether, court cases have increased in only nine years from 4,300 to 30,000. This sharp increase has created significant delay in the judicial system and has drastically slowed down attempts to provide relief to consumers that need it the most. This negatively impacts many parties, including consumers, the courts, and vehicle manufacturers. Although our lemon law is designed to protect vehicle purchasers and is a crucial consumer protection law, legislation is urgently needed to ensure the lemon law can operate as it should. This compromise legislation would provide many needed reforms by expediting and clarifying both pre-litigation and post-litigation procedures, with the practical effect of getting consumers faster relief.
>
> AB 1755 provides options for consumers by allowing them to either: (1) file their suit, without any prelitigation 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 alleged 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 original delivery of the vehicle.
>
> AB 1755 will also apply streamlined litigation procedures specifically to lemon law cases to set up a statutory structure aimed at securing early case resolution and clear sanctions for attorneys on either side who do not comply.

Additionally, the California Judges Association writes:

> California's Song-Beverly Consumer Warranty Act, commonly referred to as the "lemon law", is a strong consumer protection statute addressing defective vehicles. Enforcement of

consumer rights and a case's ability to be heard in a timely manner is critical for all court users. Over the past decade, a sudden and steady rise in lemon law filings is now dominating civil court dockets, particularly in Southern California. In a short period of time, lemon law filings increased from 4,300 in in 2015 to 24,000 in 2023 and if filings continue at their current pace will exceed 30,000 in 2024. This increase in filings represents tens of thousands of additional motion hearings, status conferences, and other actions by the court causing significant delays in the judicial system. These delays can negative impact the public's access to justice.

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.

***ARGUMENTS IN OPPOSITION**:* This measure is opposed by a coalition of auto manufacturers, as well as some consumer groups. A coalition of auto manufacturers, including Toyota and Honda, write:

While we all agree that reform is needed due to the meteoric surge in cases, AB 1755 exacerbates the current difficulties faced by consumers, courts, and several manufacturers under the Song Beverly Act rather than solving them. Furthermore, the last-minute introduction of this language during the remaining two weeks of this Legislative Session prevents all stakeholders from achieving a consensus around a fair, comprehensive solution that prioritizes consumers and eases the burden on overtaxed courts.

Ultimately, this measure would burden the judiciary, consumers, and manufacturers, all while further enriching plaintiffs' attorneys. AB 1755 is not a reform measure. It does not streamline case management, it does not promote the fair and timely resolution of our consumers' claims, and it only further complicates litigation.

Finally, a coalition of consumer organizations including the Consumers for Auto Reliability and Safety write:

A few auto manufacturers produce millions of seriously defective, often unsafe, vehicles each year. For example, according to Automotive News, last year Ford paid $1.9 billion in warranty costs and led the entire auto industry in numbers of recalled vehicles, issuing 56 recalls involving 5.7 million vehicles.

Currently, there are over 5 million vehicles on the roads in California with hazardous unrepaired safety recall defects such as brake failure, loss of steering, catching on fire, and exploding Takata airbags that cause blindness or bleeding to death

Auto manufacturers seek to divert investment dollars from honoring their warranties on vehicles they already sold, into developing new models – particularly autonomous vehicles, which threaten to cost millions of jobs

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California (co-sponsor)

General Motors LLC (co-sponsor)
California Defense Counsel
California Judges Association
Ford Motor Company
RV Industry Association
Stellantis (formerly Chrysler)

Opposition

American Honda Motor Company
Aston Martin
Autos Drive America
BMW of North America, LLC
California Hispanic Chamber of Commerce
CALPIRG
Center for Auto Safety
Consumer Federation of America
Consumer Protection Policy Center, University of San Diego
Consumers for Auto Reliability & Safety
Daimler Truck North America
Housing and Economic Rights Advocates
Hyundai Motor America
Kia America, INC.
Kids and Car Safety
Los Angeles Latino Chamber of Commerce
Lucid
Mazda North American Operations
Mercedes-Benz
National Association of Consumer Advocates
National Consumer Law Center, INC.
National Consumers League
North American Subaru, Inc.
Porsche Cars North America, INC.
Public Counsel
Rise Economy
Rivian Automotive, INC.
Safety Research and Strategies
Scout Motors INC.
Strategic Legal Practices
TELACU
Tesla
Toyota Motor North America, Inc.
Trauma Foundation
Volkswagen Group of America, INC.
Volvo Car USA

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