

AMENDED IN ASSEMBLY MAY 24, 2002
AMENDED IN ASSEMBLY APRIL 29, 2002
AMENDED IN SENATE JANUARY 7, 2002
AMENDED IN SENATE MARCH 26, 2001

SENATE BILL

No. 500

Introduced by Senators Torlakson, Machado, and Perata
(Coauthor: Senator Alarcon)
(Coauthor: Assembly Member Aroner)

February 22, 2001

An act to amend Section 1722 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 500, as amended, Torlakson. Retail merchandise, utilities, and cable television: delivery, service, and repair: times.

(1) Existing law requires a retailer with 25 or more employees selling merchandise to consumers, where that merchandise will be delivered to the consumer at a later date, to specify either at the time of the sale or at a later date prior to the delivery date, a 4-hour period within which delivery will be made if the consumer's presence is required. Existing law sets forth similar requirements for these retailers, with regard to the service and repair of merchandise. Existing law provides a cause of action in small claims court, for actual damages not to exceed \$500, against a retailer for failure to comply with these requirements, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the retailer, when the retailer made a diligent attempt to notify the consumer of its inability to deliver, service, or

repair the merchandise, or when the consumer was not present during the specified time period.

This bill would require retailers and consumers to agree to the 4-hour period within which the delivery, service, or repair will take place. The bill would increase the total amount of damages that a small claims court can award to an amount not to exceed \$600. The bill would prohibit an action when the retailer makes a diligent attempt to notify the consumer of its inability to deliver, service, or repair, either in person or by telephone, but would require that if notification is by telephone, the retailer or its agent leave a telephone number for a return telephone call, to enable the consumer to arrange a new 2-hour period for delivery, service, or repair with the retailer or the retailer's agent.

(2) Existing law requires that utilities and cable television companies inform subscribers of their right to service connection or repair within a 4-hour period, as specified, by offering the 4-hour period when the subscriber calls for service connection or repair, or by notifying their subscribers by mail three times a year of this service. Existing law further requires that when a subscriber contracts with utilities and cable television companies for a service connection or repair at a later date, and the parties agree that the presence of the subscriber is required, the utilities and cable television companies shall specify, prior to the date of service connection or repair, the time the 4-hour period for the service connection or repair begins, if the subscriber so requests. Existing law provides a cause of action in small claims court, for actual damages not to exceed \$500, against a cable television company or utility for failure to comply with these requirements, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the cable television company or utility, when a diligent attempt was made to notify the subscriber of the inability of the cable television company or utility to deliver service connection or repair within the 4-hour period, or when the consumer was not present during the specified time period.

This bill would delete the option of cable television companies and utilities to notify subscribers by mail; of their right to service connection or repair service within a 4-hour period. The bill would require cable television companies to agree with subscribers on the time for the commencement of the 4-hour period for the service connection or repair, where the parties have agreed that the presence of the subscriber is required, regardless of whether the subscriber makes a request. *The bill would require utilities to agree with subscribers on the time for*



commencement of the 4-hour period for service connection or repair when the subscriber requests the appointment. The bill would provide that if a service connection by a utility is not commenced within the 4-hour period described above or as otherwise agreed to by the utility and the subscriber, then the utility may be liable, as specified. The bill would prohibit an action when the cable television company or utility makes a diligent attempt to notify the subscriber of its inability to make the service connection or repair within the 4-hour period agreed upon, either in person or by telephone, but would require that if notification is by telephone, the cable television company or utility leave a telephone number for a return telephone call, to enable the subscriber to arrange a new 2-hour period for the service connection or repair with the cable television company or utility. The bill would increase the total amount of damages that a small claims court can award to an amount not to exceed \$600.

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

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

1 SECTION 1. Section 1722 of the Civil Code is amended to
2 read:
3 1722. (a) (1) Whenever a contract is entered into between a
4 consumer and a retailer with 25 or more employees relating to the
5 sale of merchandise which is to be delivered by the retailer or the
6 retailer's agent to the consumer at a later date, and the parties have
7 agreed that the presence of the consumer is required at the time of
8 delivery, the retailer and the consumer shall agree, either at the
9 time of the sale or at a later date prior to the delivery date, on a
10 four-hour time period within which any delivery shall be made.
11 Whenever a contract is entered into between a consumer and a
12 retailer with 25 or more employees for service or repair of
13 merchandise, whether or not the merchandise was sold by the
14 retailer to the consumer, and the parties have agreed that the
15 presence of the consumer is required at the time of service or
16 repair, upon receipt of a request for service or repair under the
17 contract, the retailer and the consumer shall agree, prior to the date
18 of service or repair, on a four-hour period within which the service
19 or repair shall be commenced. Once a delivery, service, or repair
20 time is established, the retailer or the retailer's agent shall deliver



1 the merchandise to the consumer, or commence service or repair
2 of the merchandise, within that four-hour period.

3 (2) If the merchandise is not delivered, or service or repair are
4 not commenced, within the specified four-hour period, except for
5 delays caused by unforeseen or unavoidable occurrences beyond
6 the control of the retailer, the consumer may bring an action in
7 small claims court against the retailer for lost wages, expenses
8 actually incurred, or other actual damages not exceeding a total of
9 six hundred dollars (\$600).

10 (3) No action shall be considered valid if the consumer was not
11 present at the time, within the specified period, when the retailer
12 or the retailer’s agent attempted to make the delivery, service, or
13 repairs or made a diligent attempt to notify the consumer by
14 telephone or in person of its inability to do so because of
15 unforeseen or unavoidable occurrences beyond its control. If
16 notification is by telephone, the retailer or the retailer’s agent shall
17 leave a telephone number for a return telephone call by the
18 consumer to the retailer or its agent, to enable the consumer to
19 arrange a new two-hour period for delivery, service, or repair with
20 the retailer or the retailer’s agent.

21 (4) In any small claims action, logs and other business records
22 maintained by the retailer or the retailer’s agent in the ordinary
23 course of business shall be prima facie evidence of the time period
24 specified for the delivery, service, or repairs and of the time when
25 the merchandise was delivered, or of a diligent attempt by the
26 retailer or the retailer’s agent to notify the consumer of delay
27 caused by unforeseen or unavoidable occurrences.

28 (5) It shall be a defense to the action if a diligent attempt was
29 made to notify the consumer of the delay caused by unforeseen or
30 unavoidable occurrences beyond the control of the retailer or the
31 retailer’s agent, or the retailer or the retailer’s agent was unable to
32 notify the consumer of the delay because of the consumer’s
33 absence or unavailability during the four-hour period, and, in
34 either instance, the retailer or the retailer’s agent makes the
35 delivery, service, or repairs within two hours of a newly agreed
36 upon time or, if the consumer unreasonably declines to arrange a
37 new time for the delivery, service, or repairs.

38 (b) (1) Cable television companies shall inform their
39 subscribers of their right to service connection or repair within a
40 four-hour period, if the presence of the subscriber is required, by



1 offering the four-hour period at the time the subscriber calls for
2 service connection or repair. Whenever a subscriber contracts with
3 a cable television company for a service connection or repair
4 which is to take place at a later date, and the parties have agreed
5 that the presence of the subscriber is required, the cable company
6 and the subscriber shall agree, prior to the date of service
7 connection or repair, on the time for the commencement of the
8 four-hour period for the service connection or repair.

9 (2) If the service connection or repair is not commenced within
10 the specified four-hour period, except for delays caused by
11 unforeseen or unavoidable occurrences beyond the control of the
12 company, the subscriber may bring an action in small claims court
13 against the company for lost wages, expenses actually incurred or
14 other actual damages not exceeding a total of six hundred dollars
15 (\$600).

16 (3) No action shall be considered valid if the subscriber was not
17 present at the time, within the specified period, that the company
18 attempted to make the service connection or repair *or made a*
19 *diligent attempt to notify the subscriber by telephone or in person*
20 *of its inability to do so because of unforeseen or unavoidable*
21 *occurrences beyond its control. If notification is by telephone, the*
22 *cable television company or its agent shall leave a telephone*
23 *number for a return telephone call by the subscriber to the*
24 *company or its agent, to enable the consumer to arrange a new*
25 *two-hour period for service connection or repair.*

26 (4) In any small claims action, logs and other business records
27 maintained by the company or its agents in the ordinary course of
28 business shall be prima facie evidence of the time period specified
29 for the commencement of the service connection or repair and the
30 time that the company or its agents attempted to make the service
31 connection or repair, or of a diligent attempt by the company to
32 notify the subscriber in person or by telephone of a delay caused
33 by unforeseen or unavoidable occurrences. ~~If notification is by~~
34 ~~telephone, the cable television company or its agent, shall leave a~~
35 ~~telephone number for a return telephone call by the subscriber to~~
36 ~~the company or its agent, to enable the subscriber to arrange a new~~
37 ~~two-hour period for service connection or repair.~~

38 (5) It shall be a defense to the action if a diligent attempt was
39 made to notify the subscriber of a delay caused by unforeseen or
40 unavoidable occurrences beyond the control of the company or its



1 agents, or the company or its agents were unable to notify the
2 subscriber because of the subscriber's absence or unavailability
3 during the four-hour period, and, in either instance, the cable
4 television company commenced service or repairs within a newly
5 agreed upon two-hour period.

6 (6) No action shall be considered valid against a cable
7 television company pursuant to this section when the franchise or
8 any local ordinance provides the subscriber with a remedy for a
9 delay in commencement of a service connection or repair and the
10 subscriber has elected to pursue that remedy. If a subscriber elects
11 to pursue his or her remedies against a cable television company
12 under this section, the franchising or state or local licensing
13 authority shall be barred from imposing any fine, penalty, or other
14 sanction against the company, arising out of the same incident.

15 (c) (1) Utilities shall inform their subscribers of their right to
16 service connection or repair within a four-hour period, if the
17 presence of the subscriber is required, by offering the four-hour
18 period at the time the subscriber calls for service connection or
19 repair. Whenever a subscriber contracts with the utility for a
20 service connection or repair, and the parties have agreed that the
21 presence of the subscriber is required, and the subscriber has
22 requested a four-hour appointment, the utility and the subscriber
23 shall agree, prior to the date of service connection or repair, on the
24 time for the commencement of the four-hour period for the service
25 connection or repair.

26 (2) If the service connection or repair is not commenced within
27 the four-hour period provided under paragraph (1) or another
28 period otherwise agreed to by the utility and the subscriber, except
29 for delays caused by unforeseen or unavoidable circumstances
30 beyond the control of the utility, the subscriber may bring an action
31 in small claims court against the utility for lost wages, expenses
32 actually incurred, or other actual damages not exceeding a total of
33 six hundred dollars (\$600).

34 (3) No action shall be considered valid if the subscriber was not
35 present at the time, within the specified period, that the utility
36 attempted to make the service connection or repair *or made a*
37 *diligent attempt to notify the subscriber by telephone or in person*
38 *of its inability to do so because of unforeseen or unavoidable*
39 *occurrences beyond its control. If notification is by telephone, the*
40 *utility or its agent shall leave a telephone number for a return*



1 *telephone call by the subscriber to the utility or its agent, to enable*
2 *the consumer to arrange a new two-hour period for service*
3 *connection or repair.*

4 (4) In any small claims action, logs and other business records
5 maintained by the utility or its agents in the ordinary course of
6 business shall be prima facie evidence of the time period specified
7 for the commencement of the service connection or repair and of
8 the time that the utility attempted to make the service connection
9 or repair, or of a diligent attempt by a utility to notify the subscriber
10 in person or by telephone of a delay caused by unforeseen or
11 unavoidable occurrences. ~~If notification is by telephone, the utility~~
12 ~~or its agent, shall leave a telephone number for a return telephone~~
13 ~~call by the subscriber to the utility or its agent, to enable the~~
14 ~~subscriber to arrange a new two-hour period for service~~
15 ~~connection or repair.~~

16 (5) It shall be a defense to the action if a diligent attempt was
17 made by the utility to notify the subscriber of a delay caused by
18 unforeseen or unavoidable occurrences beyond the control of the
19 utility, and the utility commenced service within a newly agreed
20 upon two-hour period.

21 (d) Any provision of a delivery, service, or repair contract in
22 which the consumer or subscriber agrees to modify or waive any
23 of the rights afforded by this section shall be void as contrary to
24 public policy.

