AMENDED IN ASSEMBLY JULY 3, 2002

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)~~
(Coauthors: Assembly Members Aroner and Koretz)

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:

SECTION 1. Section 1722 of the Civil Code is amended to read:

1722. (a) (1) Whenever a contract is entered into between a consumer and a retailer with 25 or more employees relating to the sale of merchandise which is to be delivered by the retailer or the retailer's agent to the consumer at a later date, and the parties have agreed that the presence of the consumer is required at the time of delivery, the retailer and the consumer shall agree, either at the time of the sale or at a later date prior to the delivery date, on a four-hour time period within which any delivery shall be made. Whenever a contract is entered into between a consumer and a retailer with 25 or more employees for service or repair of merchandise, whether or not the merchandise was sold by the retailer to the consumer, and the parties have agreed that the presence of the consumer is required at the time of service or repair, upon receipt of a request for service or repair under the contract, the retailer and the consumer shall agree, prior to the date of service or repair, on a four-hour period within which the service or repair shall be commenced. Once a delivery, service, or repair time is established, the retailer or the retailer's agent shall deliver the merchandise to the consumer, or commence service or repair of the merchandise, within that four-hour period.

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

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

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

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

(b) (1) Cable television companies shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair. Whenever a subscriber contracts with a cable television company for a service connection or repair which is to take place at a later date, and the parties have agreed that the presence of the subscriber is required, the cable company and the subscriber shall agree, prior to the date of service connection or repair, on the time for the commencement of the four-hour period for the service connection or repair.

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

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

(4) In any small claims action, logs and other business records maintained by the company or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and the time that the company or its agents attempted to make the service connection or repair, or of a diligent attempt by the company to notify the subscriber in person or by telephone of a delay caused by unforeseen or unavoidable occurrences.

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

subscriber because of the subscriber's absence or unavailability during the four-hour period, and, in either instance, the cable television company commenced service or repairs within a newly agreed upon two-hour period.

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

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

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

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

the consumer to arrange a new two-hour period for service connection or repair.

(4) In any small claims action, logs and other business records maintained by the utility or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and of the time that the utility attempted to make the service connection or repair, or of a diligent attempt by a utility to notify the subscriber in person or by telephone of a delay caused by unforeseen or unavoidable occurrences.

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

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

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