AMENDED IN SENATE JULY 19, 1995

AMENDED IN ASSEMBLY MAY 4, 1995

AMENDED IN ASSEMBLY APRIL 25, 1995

AMENDED IN ASSEMBLY APRIL 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1383

Introduced by Assembly Member Speier

February 24, 1995

An act to~~ repeal Chapter 9~~ *add Section 472.6 to, and to add Chapter 9.1* (commencing with Section~~ 472) of~~ *472.50) to* Division 1 of, the Business and Professions Code~~, and to amend Section 1794 of the Civil Code~~, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, Speier. Arbitration: motor vehicles.

~~(1) Existing~~

Existing law provides for the regulation and certification of 3rd-party dispute resolution processes by the Department of Consumer Affairs.

This bill would ~~repeal~~ *make* these provisions *inoperative for a specified period, during which alternative provisions added by the bill would be operative, as specified. Among other things, the bill would require the Department of Consumer Affairs to impose an additional fee of up to $2 on the sale of all new motor vehicles, as specified, to be used solely for the*

purposes of the bill subject to appropriation by the Legislature.

~~(2) Existing law generally provides for relief for a failure to comply with the Song-Beverly Consumer Warranty Act. That act requires, if a manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer to either promptly replace the new motor vehicle or promptly make restitution to the buyer, as specified. Existing law specifically provides that if the buyer establishes a violation of this provision, the buyer shall recover damages, reasonable attorney's fees, and costs and may recover a civil penalty, except as specified.~~

~~This bill would delete the specific provisions regarding recovery of damages, attorney's fees, and costs, and a civil penalty.~~

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

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

~~SECTION 1. Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code is repealed.~~

~~SEC. 2. Section 1794 of the Civil Code is amended to read:~~

~~1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter 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.~~

~~(b) The measure of the buyer's damages in an action under this section shall include the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and the following:~~

~~(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.~~

~~(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.~~

~~(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied warranty.~~

~~(d) If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.~~

SECTION 1. Section 472.6 is added to the Business and Professions Code, to read:

472.6. This chapter shall become and remain inoperative during the period the remedies set forth in Chapter 9.1 (commencing with Section 472.50) are operative.

SEC. 2. Chapter 9.1 (commencing with Section 472.50) is added to Division 1 of the Business and Professions Code, to read:

CHAPTER 9.1. THIRD-PARTY DISPUTE RESOLUTION PROCESS FOR NEW MOTOR VEHICLES

472.50. (a) The Department of Consumer Affairs shall contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between consumers and automobile manufacturers or dealers as provided in this chapter. The entities, and those persons selected as arbitrators, shall

not be affiliated with or receive remuneration from any manufacturer or new motor vehicle dealer.

(b) The Department of Consumer Affairs shall provide full-time professional staff available to advise consumers as to how to use the arbitration procedure provided for in this chapter. This staff shall make available to consumers advisory brochures, forms, and models to assist them in obtaining needed discovery, the inspection of their automobile and records by the independent experts made available in this chapter, and for other related purposes.

472.51. Those persons selected as arbitrators shall be members of the Department of Consumer Affairs Automobile Arbitration Panel. Panel members shall be specifically trained in relevant law and automotive subjects, shall have no present automobile dealer or manufacturer clients or business affiliation, and are barred from accepting employment, client business, or any remuneration whatsoever, from any party to a proceeding they have arbitrated for one year after the proceeding, or from an automobile manufacturer, dealer, importer, supplier, or anyone who has a financial interest in any such entity for one year after ceasing arbitration work pursuant to this chapter.

472.52. The Department of Consumer Affairs Automobile Arbitration Panel shall have available as expert witnesses a panel of automotive experts who shall have no economic affiliation with any manufacturer, dealer, importer, supplier, or anyone who has a proprietary interest in any such entity, if that affiliation is relevant to any testimony or advice to be requested. The panel members may be requested by the arbitrator or by any party to examine any records submitted, or vehicles or relevant parts, to testify in open proceedings in response to questions by the arbitrator and any party, and shall be subject to cross-examination. The panel members shall be paid a fee to be established by the Department of Consumer Affairs from the Automobile Arbitration Fund.

472.53. (a) Manufacturers shall provide notice of the availability of the Automobile Arbitration Panel in all of the following instances:

(1) Disclosure in the new vehicle warranty booklet.

(2) Providing a separate informational page at the time of sale or lease of any new vehicle, which shall include a copy of the Song-Beverly Act (Chapter 1 (commencing with Section 1790) of Title 1.7 of Part 4 of Division 3 of the Civil Code), and the Automobile Arbitration Panel's toll-free telephone number.

(3) At the time the consumer notifies the manufacturer of a dispute pursuant to the requirements of subdivisions (b) and (d) of Section 703.2 of Title 16 of the Code of Federal Regulations.

(b) Franchised dealers shall provide notice of the availability of the Automobile Arbitration Panel on each repair order given to a consumer.

472.54. The panel of automotive experts shall maintain a toll-free (800) telephone number for information about the jurisdiction and procedures of the panel.

472.55. All of the expenses of the Automobile Arbitration Panel, including staff expenses, the panel of automotive experts, and those of the Department of Consumer Affairs relevant to panel operations, shall be payable from the Automobile Arbitration Fund, which is hereby created and which shall be available for expenditure upon appropriation by the Legislature. The department shall impose a fee of no more than two dollars ($2) which shall be collected on the sale of each new motor vehicle in California. These fees shall be transmitted to the department, to be deposited in the Automobile Arbitration Fund.

472.56. A consumer may request arbitration by submitting a request to the department. A letter or telephone call providing sufficient information to confer likely jurisdiction constitutes a sufficient request. The department has jurisdiction where all of the following is alleged in good faith:

(a) A new motor vehicle has been purchased or leased which is registered in California.

(b) It was bought or leased within the express warranty period provided by the manufacturer or within two years, whichever is longer, and less than 25,000 miles of the request received by the Automobile Arbitration Panel.

(c) The vehicle has a nonconformity which substantially impairs its use or value or impairs its safety, which was first brought to the attention of the manufacturer or dealer during the period of any express warranty of the manufacturer or within the first year and 12,000 miles of operation from its purchase or lease.

(d) The nonconformity has not been repaired after four or more attempts, or after two or more attempts where it substantially impairs the safety of the vehicle, or after 30 total calendar days out of service.

472.57. It is an affirmative defense to allegations made under Section 472.56 that the nonconformity is the result of unauthorized abuse, neglect, or modifications or alterations of the vehicle.

472.58. Where the arbitrator finds the elements set forth in Section 472.56 are present and no applicable affirmative defense is present, the consumer is entitled to a refund or a replacement with a substantially identical vehicle, subject to a mileage offset from the point of original purchase to the time of the initial complaint or repair request to the dealer or manufacturer, calculated pursuant to paragraph (2) of subdivision (d) of Section 1793.2 of the Civil Code. The consumer shall also be awarded earned finance charges, any license and registration fees paid, and such other damages as loss of use, rental cars, insurance, loss of use of optional equipment, and other consequential and incidental damages authorized under the Commercial Code.

472.59. The manufacturer shall comply with the arbitrator's decision within 15 days of the arbitrator's final decision or be subject to a civil penalty of one thousand dollars ($1,000) for every day that the manufacturer does not comply, up to a maximum of fifty thousand dollars

($50,000) or the price of the vehicle, whichever is higher. The penalty shall be payable two-thirds to the consumer and one-third to the Automobile Arbitration Fund.

472.60. Where the dealer or manufacturer deliberately attempts to mislead the arbitrator, knowingly fails to disclose requested documents or facts which could reasonably and substantially affect the findings and award of the arbitrator, commits perjury, or abuses the processes of this chapter with the intent of barring a consumer from effective access to the Automobile Arbitration Panel, the arbitrator may assess a civil penalty of no more than fifty thousand dollars ($50) or the price of the vehicles, whichever is greater. The civil penalty shall be distributed as specified in Section 472.59.

472.61. A consumer who prevails in arbitration is entitled to recover any costs incurred, including reasonable attorney's fees.

472.62. A consumer who meets the jurisdictional requirements for arbitration shall elect to either use the remedy available in this chapter exclusively for the defects claimed, or may seek any available judicial remedy. Nothing in this chapter forecloses the right of any person to bring a class action for vehicle defects or other negligence, or to recover for personal injury due to manufacturer or dealer negligence.

472.63. The Department of Consumer Affairs shall adopt rules to implement this chapter, consistent with its terms, and subject to all the following requirements:

(a) A request for arbitration from a consumer shall be accepted or denied within 10 days of its receipt, and scheduled to be conducted before a panel of no fewer than three arbitrators, unless all parties consent to one or two arbitrators.

(b) A declination or acceptance of jurisdiction shall be made in writing, with the reasons stated, and sent to the dealer, manufacturer, and consumer by certified mail.

(c) Any party or the arbitrator may request records or documents or the inspection of the vehicle or parts by his or her agent or expert where reasonably related to the dispute. Where such a request has been refused, any party

may request an order to produce from the arbitrator, or the arbitrator may issue the order on his or her own motion. Where there is a failure to comply with such an order by any party, after a hearing thereon, the arbitrator may, in his or her discretion, (1) make a factual finding consistent with a contention of the requestor based on the alleged contents of documents or alleged objects subject to such production, (2) refuse to allow evidence contrary to a contention as stated above, (3) strike claims or defenses, or (4) dismiss the arbitration with prejudice or make a final award as sought by the consumer, as appropriate.

(d) Where evidence or testimony involving persons not parties to the dispute are clearly important to determine the relevant facts, any party may request the Department of Consumer Affairs to subpoena documents or witnesses to the hearing.

(e) Any request for records shall be made no less than seven days prior to the scheduled hearing and produced no less than two days before the hearing. Depositions are not permitted except where persons have good cause not to attend the scheduled hearing and all parties consent.

(f) Parties are entitled to present evidence under oath, documents, and exhibits, to cross-examine witnesses, and to be represented by counsel. Hearsay may be considered and affidavits considered, with appropriate weight given.

(g) A hearing may be continued only for good cause shown.

(h) All hearings and panel proceedings shall be open to the public. All documents shall be subject to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), including those applicable to privacy rights, trade secrets, and other existing provisions for nondisclosure.

(i) A hearing shall be recorded and a transcript provided free of charge upon request.

472.64. Review may be obtained of any final order or award of the panel, or of a decision to decline jurisdiction, by way of writ of review pursuant to Section 1067 of the

Code of Civil Procedure. Review shall be requested within 20 days of the initial notice of award by the arbitrator. Where requested, the arbitrator shall compile a statement of the case on appeal, including those portions of the record relied upon and a statement of findings of fact and conclusions of law, if relevant. The statement and record shall be transmitted to the superior court of the jurisdiction where the arbitration occurred within 10 days of notice of the petition. Either party may supplement the record submitted by the arbitrator from among the exhibits introduced.

472.65. The superior court shall sustain the decision of the arbitrator where it is supported by substantial evidence. There shall be no appeal from the judgment of the superior court on the petition for writ of review except for constitutional violations.

472.66. If the manufacturer or dealer petitions for writ of review, the court shall require the posting of security to assure compensation to the consumer due to the passage of time during review. If the consumer prevails in a writ of review proceeding, recovery shall include all of the following:

(a) The monetary value of the award, attorney's fees and costs incurred in arbitration and for court review, plus interest accrued from initial filing with the Automobile Arbitration Panel.

(b) If the arbitrator awarded the consumer repayment or repurchase of the vehicle, and the dealer or manufacturer filed a petition for review or otherwise prevented finality, the manufacturer or dealer shall pay thirty dollars ($30) per day for each day after the 30th day following the initial filing with the Automobile Arbitration Panel.

(c) If the court finds that the petition for writ of review brought by the manufacturer or dealer was brought without substantial basis, it shall double the amount of the total awards; or if it finds that the petition by the manufacturer or dealer was brought solely for the purpose of harassment, it shall triple the amount of the total award.

472.67. The remedies available to public prosecutors for misleading advertising, unfair practices in competition, or other violations of law which may include acts giving rise to the jurisdiction of the Automobile Arbitration Panel are not abridged or affected by this chapter.

472.68. Any agreement entered into by a consumer for the purchase of a new motor vehicle which purports to limit, waive, or disclaim the rights set forth in this chapter shall be void as contrary to public policy, and these rights shall extend to a subsequent transferee of the vehicle.

472.69. Nothing in this chapter forecloses the right of any person from pursuing rights or remedies under any other law.

472.70. The Department of Consumer Affairs shall maintain records of each request to the Automobile Arbitration Panel, and its disposition, including an index of new motor vehicles subject to complaint by year, make, and model. The department shall compile annual statistics and issue a publicly available annual report which includes all the following information provided by the manufacturer as well as derived from other sources:

(a) Requests for arbitration.

(b) Jurisdictional declinations and acceptances.

(c) Requests for replacement vehicles and dispositions.

(d) Requests for refunds and dispositions; civil penalties for noncompliance assessed or collected; civil penalties for abuse of process assessed or collected; costs paid by consumers, dealers, and manufacturers; attorney's fees paid by dealers and manufacturers; the number of arbitration proceedings where no attorneys appeared; and the number of petitions for writ of review sought and dispositions.

472.71. The remedies set forth in this chapter shall become operative upon the adoption of regulations by the Department of Consumer Affairs pursuant to this chapter and shall continue in effect for a period of four

years thereafter unless that date is extended or deleted by a later enacted statute.

O