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Consumer Protection

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Consumer Protection

Consumer Protection; consumer warranties

Civil Code §§1793.1, 1795.6 (amended).

AB 2263 (Hayes); STATS 1980, Ch 394

Support: Department of Consumer Affairs; Department of Motor Vehicles

The Song-Beverly Consumer Warranty Act¹ establishes statutory control over warranties on consumer goods.² Chapter 394 expands current provisions regarding the tolling of certain warranty periods³ and sets forth new requirements relating to written disclosure of warranty terms and conditions.⁴

Under existing law, the warranty periods of implied⁵ or express⁶ warranties made on consumer goods⁷ selling for \$50 or more are automatically tolled from the date the buyer either (1) delivers the nonconforming goods to the manufacturer or seller for warranty repairs or service, or (2) makes proper notification of the nonconformity⁸ *until* the date the repaired goods are (1) returned to the buyer, (2) made available for the buyer's possession, or (3) if the repairs were made at the buyer's residence, the buyer is notified that the repairs have been completed.⁹ Chapter 394 expressly precludes the expiration of any warranty for nonconforming goods in two situations: (1) when the buyer has delivered the goods for service, or has made proper notification of the need for service, but the work has been delayed until after the date originally set for the expiration of the warranty for reasons beyond the buyer's control;¹⁰ or (2) when the repair work has been performed, but the nonconformity still exists, and the buyer has so notified

1. See CAL. CIV. CODE §§1790-1795.7.

2. See *id.*; 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §§49(2), 261 (8th ed. 1973), (Supp. 1980). See generally Comment, *Consumer Protection: The Effect of the Song-Beverly Consumer Warranty Act*, 4 PAC. L.J. 183 (1973).

3. Compare CAL. CIV. CODE §1795.6 with CAL. STATS. 1974, c. 844, §1, at 1809.

4. Compare CAL. CIV. CODE §1793.1(a) with CAL. STATS. 1972, c. 1293, §1, at 2584.

5. See CAL. CIV. CODE §1791.1 (definition of implied warranty).

6. See *id.* §1791.2 (definition of express warranty).

7. See *id.* §1791(a) (definition of consumer goods).

8. See *id.* §§1793.2(c), 1793.3(c), 1795.6(a).

9. See *id.* §1795.6(a). See generally 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 239 (1975) (consumer protection—warranties).

10. See CAL. CIV. CODE §1795.6(b).

the manufacturer¹¹ or seller within 60 days of completion of service.¹² In either case, the warranty will expire according to its terms, including any extensions, *only* after the nonconformity has been corrected.¹³ This provision will protect the buyer from manufacturers or sellers who allow warranties to expire before satisfactorily completing repairs so that they can charge for the service.¹⁴

Chapter 394 also provides that the consumer is to be informed of these expanded tolling provisions.¹⁵ In addition to the clear and understandable language already required by statute for express warranties,¹⁶ Chapter 394 requires that, in cases of express *or* implied warranties on consumer goods selling for \$50 or more, a statement containing specific information must appear in boldface type on the face of repair work orders or invoices, or be attached thereto, and must be given to the buyer at the time the repair is made.¹⁷ The buyer also must be informed of the right to have the product serviced or repaired during the warranty period, and be notified that the period will not expire until the defect is eliminated.¹⁸ Additionally, the statement must specify that the warranty period will be extended for the number of days the product is out of the buyer's possession for repairs,¹⁹ and that extensions will be allowed for either delayed or faulty repairs.²⁰ Finally, the statement must inform the buyer that he or she is entitled to a refund or replacement, subject to a reasonable deduction for use, if the defect is not fixed after a reasonable number of attempts.²¹ In summary, through liberalized warranty period extension provisions²² and through additional disclosure requirements, the enactment of Chapter 394 appears to afford the California consumer broader protection than that previously provided.²³

11. *See id.* §1795.6(c) (definition of manufacturer).

12. *See id.* §1795.6(b).

13. *See id.*

14. *See* Assemblyman J. Robert Hayes, Press Release, June 18, 1980.

15. *Compare* CAL. CIV. CODE §1793.1(a)(2) *with id.* §1795.6(a), (b).

16. *See id.* §1793.1(a)(1).

17. *See id.* §1793.1(a)(2).

18. *See id.*

19. *See id.* *See generally id.* §1795.6(a).

20. *See id.* §1793.1(a)(2). *See generally id.* §1795.6(b).

21. *See id.* §1793.1(a)(2). *See generally id.* §1793.2(d) (replacement of goods under express warranty or reimbursement therefor).

22. *See id.* §1795.6(b).

23. *See id.* §1793.1(a)(2).

Consumer Protection; repossession notice

Business and Professions Code §§7538.7, 7538.8 (new); 7538.2 (amended).

AB 2953 (Moore); STATS 1980, Ch 954

Support: Department of Consumer Affairs; Department of Finance

Prior to the enactment of Chapter 954, repossessionors were required to inventory all nonencumbered personal property found in or on any repossessed personal property, but were not required to send the inventory to the consumer or to notify the consumer of the repossession in any way.¹ Chapter 954 now requires that the inventory contain (1) the name, address, and telephone number of the person to contact for recovery of the listed property and (2) a list of any storage charges to be made.² The inventory must then be provided to the consumer by personal service or by regular mail to his or her last known address within 48 hours of the seizure or, if the 48-hour period includes a Saturday, Sunday, or postal holiday, within 72 hours.³ Chapter 954 also requires that the consumer be provided with a notice of seizure by mail or personal service as soon as possible, but no later than 48 hours after the repossession.⁴ The notice must contain (1) the names, addresses, and telephone numbers of both the repossessionor and the legal owner of the property,⁵ (2) a prescribed statement that repossessionors are regulated by the Bureau of Collection and Investigative Services and that the consumer is entitled to a personal property inventory,⁶ and (3) a statement that damage to a vehicle during or after a repossession is the liability of the repossessionor.⁷

Finally, Chapter 954 prohibits false representations by a repossessionor,⁸ specifically prohibiting impersonation of a government officer⁹ or an attorney, or misrepresentation of a document as being from an attorney.¹⁰ Chapter 954 also prohibits (1) representations that the debtor will be arrested or imprisoned for nonpayment of debt, or (2) any threat of garnishment, attachment, or any other legal action when the repossessionor cannot or does not intend to take such action.¹¹ The repos-

1. Compare CAL. BUS. & PROF. CODE §7538.2 with CAL. STATS. 1959, c. 2158, §20, at 5221.

2. See CAL. BUS. & PROF. CODE §7538.2.

3. See *id.*

4. See *id.* §7538.7.

5. See *id.* §7538.7(a), (b).

6. See *id.* §7538.7(c).

7. See *id.* §7538.7(d).

8. See *id.* §7538.8.

9. See *id.* §7538.8(a).

10. See *id.* §7538.8(b).

11. See *id.* §7538.8(c), (d).

essor is also required to refrain from the following specified activities: (1) attempting to disgrace the consumer by making false accusations that the consumer has committed a crime;¹² (2) simulation of official government documents or false representations that a document is approved by a court¹³ or is a legal process;¹⁴ (3) failure to disclose the reposessor's debt collection purpose in any communication made to collect a debt or to obtain information about the consumer;¹⁵ (4) use of a business name other than the reposessor's true name;¹⁶ (5) misrepresentations of the nature of legal process forms or representations that they do not require action by the consumer;¹⁷ or (6) the use of deceptive forms.¹⁸ Apparently, the prohibitions contained in Chapter 954 do not apply to persons other than licensed reposseors.¹⁹

12. *See id.* §7538.8(e).

13. *See id.* §7538.8(f).

14. *See id.* §7538.8(h).

15. *See id.* §7538.8(g).

16. *See id.* §7538.8(i).

17. *See id.* §7538.8(j).

18. *See id.* §7538.8(k).

19. *See id.* §§7520, 7521(e), 7522, 7538.8.