

Date of Hearing: March 12, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1849 (Grayson) – As Introduced January 17, 2024

SUBJECT: Tanner Consumer Protection Act

SYNOPSIS

This bill proposes expanding the definition of a “new motor vehicle” under the Tanner Consumer Protection Act to include non-motorized recreational vehicles (RVs), including fifth-wheel travel trailers.

During the COVID-19 pandemic, when travel was severely limited, people took to the road in RVs as a way of getting away from home while still following isolation and distancing protocols. As the sales rose, there was also a large spike in the number of these vehicles that were recalled and growing frustration from consumers who discovered they had purchased “shoddy” RVs that quickly started falling apart.

The Song-Beverly Consumer Warranty Act and the Tanner Consumer Protection Act require the manufacturers and distributors of consumer goods to offer a warranty on their goods and either repurchase or replace a product if they fail to repair faulty products according to that warranty. Song-Beverly applies to any consumer goods, including consumer electronics, vehicles, trailers, and boats. The act only expressly excludes clothing and consumables (food and drinks) from its scope. The Tanner Act is contained within the Song-Beverly statutes. It applies specifically to new vehicles and, importantly for the purposes of this bill, it expressly allows the consumer to choose whether or not they want a refund or a replacement vehicle, as opposed to the general consumer goods provisions that allow the manufacturer to decide the remedy.

Both acts require the manufacturers and distributors of consumer goods to either repurchase or replace a product if they fail to repair it according to their warranty. The key difference between the state’s consumer protection laws, for the author, is that under the first one the manufacturer gets to decide the remedy and under the second the buyer gets to make that decision. In order to address that concern, this bill proposes adding non-motorized travel trailers to the Tanner Act protections, thus allowing owners of these vehicles to determine the remedy they would prefer, in the event that a manufacturer fails to conform a new recreational vehicle to the applicable warranties.

The question before the Committee is whether the current remedies are sufficient or whether the owners of new non-motorized RVs should receive the same enhanced remedies as motorized RVs in the event that the vehicles are found to not be suitable for sale. Weighing the arguments presented by the author and the bill’s opposition, the precedent set in other states that include these vehicles in their Lemon Laws, and the lack of clear consistency in the current definition of a “new motor vehicle” (i.e. including some, but not all, vehicles required to be registered with the DMV and including some, but not all, motorized vehicles), it appears reasonable for the Committee to approve adding non-motorized RVs to the Tanner Act.

This bill is author sponsored and is opposed by Consumers for Auto Reliability and Safety and the Center for Auto Safety.

SUMMARY: Expands the definition of a “new motor vehicle” under the Tanner Consumer Protection Act. Specifically, **this bill:**

- 1) Expands the definition of a “new motor vehicle” to include a travel trailer without motive power that is towed by a motor vehicle, including a fifth-wheel travel trailer.
- 2) Defines “fifth-wheel travel trailer” as a vehicle designed for recreational purposes to carry persons or property on its own structure and so constructed as to be drawn by a motor vehicle by means of a kingpin connecting device.

EXISTING LAW:

- 1) Provides that, except as specified, every sale of consumer goods that are available for purchase by the public in this state shall be accompanied by the manufacturer’s and the retail seller’s implied warranty that the goods are suitable for sale. (Civ. Code § 1792)
- 2) Defines “express warranty” to mean:
 - 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. (Civ. Code § 1791.2(a).)
- 3) Provides that, except as specified, existing state laws shall 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. (Civ. Code § 1793.)
- 4) Requires every manufacturer, distributor, or retailer making express warranties with respect to consumer goods to fully set forth those warranties in simple and readily understood language that clearly identifies the party making the express warranties, and that conforms to the federal standards for warranty terms and conditions. (Civ. Code § 1793.1(a).)
- 5) Requires every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty to, among other things, do all of the following:
 - a) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold in order to carry out the terms of those warranties, or designate and authorize independent repair or service facilities reasonably close to all areas where its goods are sold.
 - b) Commence service and repair for goods that do not conform to the express warranties within 30 days unless the buyer agrees in writing to the contrary.
 - c) Replace the 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. (Civ. Code § 1793.2.)

- 6) Requires that if a manufacturer 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 shall either promptly replace the new motor vehicle or promptly make restitution to the buyer. *However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.* [Emphasis added.] (Civ. Code § 1793.2(d)(2))
- 7) Permits any buyer of consumer goods who is damaged by a failure to comply with any obligation under an implied or express warranty or service contract to bring an action for the recovery of damages and other legal and equitable relief, as well as court costs and attorney's fees; and specifies that if the buyer establishes that failure to comply was willful, the judgment may include, in addition to damages and other legal and equitable relief, a civil penalty which shall not exceed two times the amount of actual damages. (Civ. Code § 1794.)
- 8) Establishes the Tanner Consumer Protection Act. (Civ. Code §1793.22(a))
- 9) Presumes 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 injury if the vehicle is driven and the same nonconformity has been subject to repair two or more times.
 - b) The same nonconformity has been subject to repair four or more times.
 - c) The vehicle is out of service by reason of repair of nonconformities by the manufacturer more than 30 calendar days since delivery of the vehicle to the buy.
(Civ. Code § 1793.22 (b))
- 10) Defines a "nonconformity" as a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee. (Civ. Code §1793.22 (e)(1))
- 11) Defines a "new motor vehicle" as:
 - 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 vehicles are registered in this state.
 - 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. A demonstrator is a vehicle

assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type. (§1793.22 (e)(2))

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

COMMENTS:

1) **Background.** During the COVID-19 pandemic, when travel was severely limited, people took to the road in recreational vehicles (RV) as a way of getting away from home while still following isolation and distancing protocols. Accordingly, the sales of these vehicles rose dramatically. According to the RV Industry Association, they produced 600,000 RVs in 2021, eclipsing their previous highest year by 19 percent.¹

2) **California's consumer protection laws.** The Song-Beverly Consumer Warranty Act and the Tanner Consumer Protection Act are a group of California civil code sections commonly known as and referred to as the California lemon law. Essentially these laws require the manufacturers and distributors of consumer goods to either repurchase or replace a product if they fail to repair it according to their warranty. Song-Beverly applies to any consumer goods, including consumer electronics, vehicles, trailers, and boats. The act only expressly excludes clothing and consumables (food and drinks) from its scope. The Tanner Act is contained within the Song-Beverly statutes. It applies specifically to new vehicles and, importantly for the purposes of this bill, it expressly allows the consumer to choose whether or not they want a refund or a replacement vehicle, as opposed to the general consumer goods provisions that allow the manufacturer to decide the remedy.

3) **Purpose of this bill.** According to an *Indianapolis Star* newspaper in-depth investigation in 2022, the rush to meet the demand for RVs during the pandemic lead to overworked and, sometimes, undertrained workers being pressed to build more and faster to meet the demand. According to their investigation:

... RV owners, including those who bought units from Thor-owned companies, complain of problems that range from cracks on cabinets and improperly installed ceiling fans to more serious ones such as mold due to water damage, faulty electrical wiring and gas leaks.

Critics of RV manufacturers have noted that while sales went up, the quality went down. According to data from the National Highway Traffic Safety Administration companies owned by Thor Industries, the largest RV maker in the country, recalled more than 156,000 RVs this year. Forest River, a subsidiary of Warren Buffet's Berkshire Hathaway, recalled nearly 200,000 RVs this year. Winnebago Industries recalled more than 125,000 RVs in 2022. All were among the highest for each company in the previous five years.²

Non-motorized RVs are covered under Song-Beverly, which ensures that buyers of consumer goods obtain the benefit of an express warranty with those goods. Song-Beverly requires manufacturers to either replace the nonconforming item or reimburse the purchase price paid by

¹ "Historical RV Data" RV Industry Association available at <https://www.rvia.org/historical-rv-data>.

² Phillips and Huang, "Bottom Line: Shoddy work. Unhappy buyers. A near-death experience. When the RV lifestyle goes wrong" *Indianapolis Star* (Oct. 19, 2022) available at <https://www.indystar.com/in-depth/news/investigations/2022/10/19/rv-horrors-defective-units-unhappy-buyers-a-near-death-experience/69523329007/>.

the buyer, less the amount directly attributable to the buyer's use before discovery of the nonconformity. Under these provisions, manufactures decide how to honor the warranty. Under the Tanner Act, which pertains specifically to some motor vehicles, a buyer is free to request a refund in lieu of replacement, and manufacturers are prohibited from requiring that buyers accept a replacement vehicle.

Because non-motorized RVs are not covered by the Tanner Act, owners are not currently afforded the ability to elect their own remedy in terms of obtaining either a replacement or a refund. The purpose of this bill is to include non-motorized RVs in the definition of a "new motor vehicle" in order to provide the buyer with that choice.

4) **Author's statement.** According to the author:

During the COVID-19 pandemic, recreational vehicle (RV) sales skyrocketed and saw a massive surge in demand. With this robust demand for RVs, consumers are finding themselves with faulty or poorly made travel trailers or fifth wheels. While consumers of new motor vehicles may be protected in the Lemon Law, non-motorized travel trailers or fifth wheels are not included in certain Lemon Law Protections. AB 1849 will help protect consumers and provide a legal recourse for individuals who unknowingly purchase defective travel trailers or fifth wheels.

5) **What this bill would do.** As noted earlier, both acts require the manufacturers and distributors of consumer goods to either repurchase or replace a product if they fail to repair it according to their warranty. The key difference between the state's consumer protection laws, for the author, is that under the first one the manufacturer gets to decide the remedy and under the second, the buyer gets to make that decision. In order to address that concern, this bill proposes adding non-motorized travel trailers to the Tanner Act protections, thus allowing owners of these vehicles to determine the remedy they would prefer, in the event that a manufacturer fails to conform a new recreational vehicle to the applicable warranties.

6) **Analysis.** The question before the Committee is whether owners of new non-motorized RVs should receive the same enhanced remedies as new motorized RVs in the event that the vehicles are found to not be suitable for sale or whether they are sufficiently covered by the state's general Song-Beverly consumer protection laws that apply to all goods. The author argues that consumers who purchase these types of RVs that turn out to be defective need the protection and legal recourse provided by the Tanner Act.

Opponents of the bill argue that the protections in Song-Beverly are sufficient and that adding a non-motorized vehicle to the definition strains credulity. However, *if* the chief consideration when it comes to whether or not something is a motor vehicle is the presence of a motor, that seems to suggest that *all* motorized vehicles should be included in the definition, including all on- and off-road motorized vehicles and motorized boats, regardless of whether or not they are required to be registered with the Department of Motor Vehicles (DMV). On the other hand, *if* the key consideration is that a new motor vehicle must be registered with the DMV as a vehicle, *then* it is not clear why non-motorized boats and trailers, including RVs, would be excluded, since they are considered vehicles and require registration. Essentially, the current definition of a "new motor vehicle" [see EXISTING LAW (12)], by virtue of what is and is not included, is not necessarily consistent, thus presumably allowing for additions, such as travel trailers, without violating its intent.

In addition, the author has found that the Song-Beverly Act is not sufficient protection for RV owners, while the opposition argues that it is sufficient. While the author offers several media articles related to consumers who purchased faulty RVs and found the general consumer protection laws did not offer a sufficient remedy, unfortunately specific data or research that would confirm this conclusion does not appear to be readily available. The opposition asserts that Song-Beverly provides sufficient remedy and the added Tanner Act protection is not appropriate or necessary and, in fact, that the change in definition actually threatens to weaken existing consumer protections. However, they do not present evidence demonstrating, even anecdotal evidence, that the current protection is sufficient, nor do they clearly explain how broadening the definition in this way threatens the current law.

If this bill passes and is signed into law, California would not be the first state to include a wider range of vehicles in its Lemon Law, nor would it be the first to include this specific type of vehicle. For example, Texas' Lemon Law covers cars, trucks, vans, motorcycles, all-terrain vehicles, motor homes, *towable recreational vehicles (TRVs)* [emphasis added], and neighborhood electric vehicles that develop defects covered by a manufacturer's written warranty.³

Given the arguments presented, the precedent in other states, and the lack of clear consistency in the current definition, it appears reasonable for the Committee to approve adding non-motorized RVs to the Tanner Act.

7) **Proposed clarifying amendments.** As currently drafted, the language suggests that travel trailers and used vehicles would only be included if they met both criteria. In other words, a travel trailer would need to be used and the used vehicle would only count if it was a travel trailer. In order to rectify this, the Committee amendments would move the travel trailer to (A) and return (B) to mirror the current statute, only modifying it to follow the formatting of (A).

2) (A) "New motor vehicle" means *any* of the following:

(i) A new motor vehicle that is bought or used primarily for personal, family, or household purposes.

(ii) 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 vehicles are registered in this state.

(iii) A travel trailer without motive power that is towed by a motor vehicle, including, but not limited to, a fifth-wheel travel trailer.

(B) "New motor vehicle" includes *all-of the* following:

(i) The chassis, chassis cab, and that portion of a motor home devoted to its propulsion, except any portion designed, used, or maintained primarily for habitation.

³ See <https://www.txdmv.gov/motorists/consumer-protection/lemon-law>.

(ii) A dealer-owned vehicle and a “demonstrator” or other motor vehicle sold with a manufacturer’s new car *warranty*, *except* 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. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

~~(iii) A travel trailer without motive power that is towed by a motor vehicle, including, but not limited to, a fifth-wheel travel trailer.~~

8) **Related legislation.** AB 1875 (Flora, 2022) would exempt alarm companies governed by the Alarm Companies Act from certain provisions of Song-Beverly pertaining to service contracts. That bill died in the Assembly without a hearing.

AB 2912 (Berman; Chap. 464, Stats. 2022) prohibits a manufacturer, distributor, or retail seller from making an express warranty with respect to a consumer good that commences earlier than the date of delivery of the good, unless the express warranty was made before July 1, 2023.

SB 983 (Eggman, 2022) would require manufacturers of certain electronic or appliance products that make express warranties for products worth \$50 or more to make available sufficient service literature and functional parts, on fair and reasonable terms, to owners of the equipment or products, service and repair facilities, and service dealers. That bill was held under submission in the Senate Appropriations Committee.

AB 1221 (Flora, Chap. 452, Stats. 2021) clarifies that service contracts can cover a single product or a class of products, and provides explicit authorization for a service contractor to enter into automatically renewing month-to-month service contracts with consumers subject to certain requirements.

AB 1163 (Eggman, 2019) was substantially similar to SB 983, above. AB 1163 died in the Assembly Committee on Privacy & Consumer Protection Committee.

SB 713 (Anderson, 2017) would have expanded the definition of “new motor vehicle” for these purposes to mean a vehicle with a gross vehicle weight of 10,000 pounds or greater that is bought or used exclusively for business purposes, by a person, including a partnership, limited liability company, corporation, association, or any other legal entity. The bill would provide that for new motor vehicles fitting this definition, a reasonable number attempts must have been made within 18 months from the delivery to the buyer, or 100,000 miles on the odometer of the vehicle, whichever comes first. That bill died in the Senate without a hearing.

SB 1326 (Roth, Chap. 226, Stats. 2014) requires that all new and used hearing aids sold in this state be accompanied by a written warranty providing specified language, including, among other things, that if the device is not initially fit for the buyer’s particular needs, it may be returned to the seller within 45 days of the initial date of delivery to the buyer, and requires the warranty period to resume on the date upon which a repaired or serviced hearing aid is delivered to the buyer.

ARGUMENTS IN OPPOSITION:

Both the Consumers for Auto Reliability and Safety and the Center for Auto Safety present similar arguments in opposition. Specifically, the Center for Auto Safety writes:

We understand that this measure is introduced to protect purchasers of travel trailers, which is a laudable goal, but purchasers of travel trailers already receive sufficient protections under the Song-Beverly Act. AB 1849 contains language that extends far beyond travel and fifth-wheel trailers, and threatens established law protecting purchasers of used vehicles with a portion of the manufacturer's warranty still in effect.

Furthermore, the modification of the definition of "new motor vehicle" to include trailers with no motor or other means of propulsion strains credulity and is inconsistent with a number of provisions in the CA Lemon Law which assume the presence of an engine, odometer, and other vehicle features not present in a travel trailer.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file with this committee.

Opposition

Center for Auto Safety
Consumers for Auto Reliability & Safety

Analysis Prepared by: Julie Salley / P. & C.P. / (916) 319-2200