

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2912 (Berman)
Version: May 4, 2022
Hearing Date: June 14, 2022
Fiscal: No
Urgency: No
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SUBJECT

Consumer warranties

DIGEST

This bill 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.

EXECUTIVE SUMMARY

The Song-Beverly Consumer Warranty Act provides consumer warranty protection to buyers of consumer goods, including motor vehicles, home appliances, and home electronic products. The act requires certain implied warranties to accompany the retail sale of consumer goods. This includes implied warranties of merchantability and of fitness for particular purposes, as specified.

Express warranties are written statements arising out of a sale to the consumer of a consumer good pursuant to which 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. Concerns have arisen that the increase in e-commerce and more recently the severe supply chain delays have undercut the utility of these warranties for consumers.

This bill prohibits any express warranties regarding consumer goods made by a manufacturer, distributor, or retail seller from starting earlier than the date of delivery of the good.

The bill is author sponsored. It is supported by a variety of consumer advocacy groups, including the Consumer Federation of California and the California Public Interest Research Group. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Song-Beverly Consumer Warranty Act, which sets forth standards for warranties that govern consumer goods and outlines remedies available to purchasers. (Civ. Code § 1790 et seq.)
- 2) Requires every sale of consumer goods that are sold at retail in this state to be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. (Civ. Code § 1792.)
- 3) Provides that where a retailer or distributor has reason to know at the time of the retail sale that the goods are required for a particular purpose, and that the buyer is relying on the manufacturer's, retailer's, or distributor's skill or judgment to select or furnish suitable goods, the sale shall be accompanied by the relevant entity's implied warranty that the goods are fit for that purpose. (Civ. Code §§ 1792.1, 1792.2.)
- 4) Provides that such implied warranties cannot be disclaimed or waived, except as specifically provided. (Civ. Code §§ 1792.3, 1792.4.)
- 5) Provides that, except as specified, nothing in the Act affects the right of the manufacturer, distributor, or retailer to make express warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods. (Civ. Code § 1793.)
- 6) 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, which shall clearly identify the party making the express warranties, and which shall conform to applicable federal standards. (Civ. Code § 1793.1.)
- 7) Defines "express warranty" to mean a written statement arising out of a sale to the consumer of a consumer good pursuant to which 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. In the event of any sample or model, an express warranty is that the whole of the goods conforms to such sample or model. (Civ. Code § 1791.2.)

- 8) Provides, pursuant to federal law, that any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose, among other things, the point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration. (16 C.F.R. Sec. 701.3(a)(4).)

This bill 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. It does not limit an express warranty made before January 1, 2023.

COMMENTS

1. Consumer good warranties

The Song-Beverly Consumer Warranty Act sets forth standards for warranties that govern consumer goods and outlines remedies available to purchasers. Retail sales of consumer goods are accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. In specified circumstances, an implied warranty that the good is fit for a particular purpose also attaches. Such implied warranties can generally not be waived or otherwise modified except in limited, specified circumstances.

Express warranties are additional warranties that can be expressed by a manufacturer, distributor, or retailer in connection with the sale of consumer goods. They commit the entity to preserving or maintaining the utility or performance of the relevant good, or compensation if such warranty fails. Unlike implied warranties, they must be written statements as to their scope and application, pursuant to the Act.

At the federal level, the Magnuson-Moss Warranty Act requires entities providing express warranties to fully and conspicuously disclose in simple and readily understood language the terms and conditions of such a warranty. (15 U.S.C. § 2301 et seq.) The Federal Trade Commission is empowered to promulgate regulations to carry out the act. However, the FTC is expressly prohibited from prescribing the duration of written warranties given or to require that a consumer product or any of its components be warranted at all.

FTC regulations require a series of disclosures in connection with express warranties on consumer products costing more than \$15. This includes clear language indicating the point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of the warranty duration. (16 C.F.R. § 701.3.)

Concerns have arisen that initiating such warranties at the point of purchase undermines their utility for consumers when the consumer does not receive the good at that point. The author and supporters highlight two conditions that make it increasingly likely that there are lag times between purchase and receipt, thereby affecting the value of these warranties. The first is the dramatic rise in e-commerce.

According to the United States Department of Commerce, e-commerce constituted 19.1 percent of all retail sales in 2021, increasing 50.5 percent since 2019, with Amazon accounting for more than 40 percent of all e-commerce in the country.¹ Inherently, when a consumer buys a consumer good online there is some delay before they receive that good. If a relevant one-year consumer warranty begins when the “buy” button is clicked and the good does not arrive for several months, the warranty is of fractional value. A Los Angeles Times article documented consumer frustrations with this lost time, quoting one regarding a warranty on his Whirlpool dryer: “What if you’re remodeling your house and don’t receive an appliance for six months? [...] Have you lost half your warranty?”²

The second condition is the recent, widespread disruption of the global supply chain:

Covid-19 has left one very destructive economic issue in its wake: disruption to global supply chains.

The rapid spread of the virus in 2020 prompted shutdowns of industries around the world and, while most of us were in lockdown, there was lower consumer demand and reduced industrial activity.

As lockdowns have lifted, demand has rocketed. And supply chains that were disrupted during the global health crisis are still facing huge challenges and are struggling to bounce back.

This has led to chaos for the manufacturers and distributors of goods who cannot produce or supply as much as they did pre-pandemic for a variety of reasons, including worker shortages and a lack of key components and raw materials.³

¹ Jessica Young, *US ecommerce grows 14.2% in 2021* (February 18, 2022) *Digital Commerce 360*, <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>. All internet citations are current as of May 28, 2022.

² David Lazarus, *Warranties usually start on purchase date, not delivery date* (February 9, 2015) Los Angeles Times, <https://www.latimes.com/business/la-fi-lazarus-20150210-column.html>.

³ Holly Ellyatt, *Supply chain chaos is already hitting global growth. And it's about to get worse* (October 18, 2021) CNBC, <https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html>.

If warehouses and retailers are less likely to have desired products in stock at the time of purchase, the delay between purchase and delivery are likely to only get longer and longer, further undermining consumer warranties.

2. Enhancing express warranties for consumers

While FTC regulations set the default starting point for express warranties at the purchase of the consumer good, California law, namely the Song-Beverly Act, does not generally dictate when such warranties take effect. There are exceptions for certain wheelchairs, assistance devices, and hearing aids. These warranties are required to take effect upon receipt or delivery to the consumer. (Civ. Code §§ 1793.02, 1793.025.)

This bill 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. This applies prospectively and therefore does not limit an express warranty made before January 1, 2023.

According to the author:

Unfortunately, when a warranty effective date starts at the time of purchase, the consumer may not receive the full benefit or duration of the warranty if delivery of the product takes days, weeks, or even months to arrive. This was a problem prior to the pandemic and current supply chain issues, but has only grown more apparent. For example, if an express warranty is good for one year, but the consumer does not receive the product for six months, then the consumer has essentially lost half of the warranty. AB 2912 would require express warranties to start no earlier than the date of delivery of the product rather than the date of purchase. It is important to point out that that there is precedent for having warranties begin on the delivery date. Carpet installers, for example, typically operate this way and a European warranty begins when a product is received, not purchased. Additionally, according to state law, the duration of warranties for wheelchairs and hearing aids already start from the date of delivery. AB 2912 is a common sense consumer protection bill that builds upon existing law.

Writing in support, the California Low-Income Consumer Coalition argues:

When a warranty's effective date starts at the time of purchase, the consumer may not receive the full benefit of the warranty. This was a problem prior to the pandemic and current supply chain issues, but has grown more apparent with products being delayed weeks if not months. For example, if an express warranty is good for one year, but the

consumer does not receive the product for six months, then the consumer has essentially lost half of the warranty period.

It is important to point out that there is precedent for having warranties begin on the delivery date. Carpet installers, for example, typically operate this way and a European warranty begins when a product is received, not purchased.

Consumer Watchdog asserts the bill is “a common-sense reform that will ensure Californians receive the products they pay for.”

SUPPORT

California Low-Income Consumer Coalition
California Public Interest Research Group
Consumer Attorneys of California
Consumer Federation of California
Consumer Protection Policy Center at USD School of Law
Consumer Watchdog
Housing and Economic Rights Advocates
Public Law Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1875 (Flora, 2022) exempts alarm companies governed by the Alarm Companies Act from certain provisions of the Song-Beverly Act pertaining to service contracts. This bill is currently in the Assembly Privacy and Consumer Protection Committee.

SB 983 (Eggman, 2022) requires manufacturers of an electronic or appliance product, as defined, with a wholesale price to the retailer of not less than \$50 to make available, on fair and reasonable terms, sufficient service literature, at no charge, and prescribed functional parts and tools to owners of the product, service and repair facilities, and service dealers for specified timeframes. This bill was held on suspense in the Senate Appropriations Committee.

Prior Legislation:

AB 1221 (Flora, Ch. 452, Stats. 2021) amended the law applicable to service contracts to allow for such contracts to cover a class of products, rather than a single product, and to be offered on a periodic basis and continue until canceled, as provided.

SB 1326 (Roth, Ch. 226, Stats. 2014) clarified hearing aid warranty provisions by requiring a retailer to provide written warranty beginning and expiration dates from the time the hearing aids are initially delivered to the buyer; clarified the hearing aid warranty tolling period after repair or service; and required the seller to provide a work order or receipt with the date the warranty period resumes and the revised expiration date of the warranty adjusted to reflect the suspension of the warranty period during repair or service.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 0)
