

Song–Beverly Act Reforms – Rebalancing Consumer Rights and OEM Responsibilities?

MAY 2, 2025

Since the 1970s, the Song–Beverly Consumer Warranty Act (“Song–Beverly Act” or “Act”) was meant to protect consumers who buy (or lease) vehicles that may be defective. The Song–Beverly Act has seen several amendments, most recently with Assembly Bill 1755 (“AB 1755”).^[1] AB 1755 establishes new procedures for consumers alleging noncompliance with certain express warranties to (a) stem the recent flood in lemon law litigation, (b) streamline discovery, and (c) expedite settlements.^[2] But the bill drew opposition from both consumer groups and original equipment manufacturers, including automobile manufacturers (“OEMs”)—so much so, that by the time the bill became law, its authors had already agreed to introduce a second bill:^[3] Senate Bill 26 (“SB 26”).^[4] This blog post gives an overview of the two amendments and relevant provisions of the Act.

SCOPE OF THE SONG–BEVERLY ACT

Generally under the Song–Beverly Act, consumers may pursue remedies against those “who make [] warranties”^[5] for alleged breach of an express warranty or implied warranty of merchantability.^[6] Before bringing an express warranty claim, a consumer must first give an OEM a reasonable opportunity to repair the vehicle. If an OEM is unable to repair the vehicle after “a reasonable number of attempts,” it must offer to replace or repurchase the vehicle.^[7] Only if an OEM does not do so, *then* the consumer may sue. The consumer must prove (1) the nonconformity of the vehicle, (2) presentation of the vehicle to the OEM for repair, and (3) failure to repair,^[8] with remedies including restitution, replacement, cost of repairs, attorneys’ fees, and if the noncompliance was “willful,” civil penalties.^[9] As for implied warranty claims, consumers must prove lack of merchantability, causation, and damages, and may seek any of the same remedies.^[10] If they “rejected” or “revoked acceptance” of their vehicle, they may recover the price paid or payable for the vehicle in lieu of restitution or replacement.

But the Act has limits. It only covers vehicles sold (or leased) in California, express warranties issued by OEMs directly to the consumer, and implied warranties on *new* vehicles and used vehicles sold with a new express warranty. In other words, OEMs are not liable for sales by third-party retailers.^[11] The Act’s statute of limitations also requires a consumer to bring an implied warranty claim within four years of purchase,^[12] and an express warranty claim within the warranty period, subject to statutory tolling provisions.^[13]

REFORMS UNDER AB 1755

AB 1755 places certain additional requirements on actions seeking restitution or replacement of a *new* motor vehicle from an OEM, “distributor[],” or “warrantor” under an “applicable express warranty.”^[14] Generally, a consumer must bring such actions within one year of the warranty’s expiration date and within six years of the original date of delivery.^[15] The specific requirements go into effect in two waves.

The first wave establishes discovery and mediation processes for civil actions filed on or after January 1, 2025. Namely, after the defendant files an answer or other responsive pleading:

- The parties must serve initial disclosures and produce various documents relevant to the consumer’s claim within **60 days**;^[16]
- The parties may take (at most two-hour) depositions of one another within **120 days**;^[17] and
- The parties must schedule a mediation within **90 days**, to occur within **150 days** of filing of the answer or other responsive pleading.^[18]

The second wave, effective July 1, 2025,^[19] imposes pre-suit notice requirements on consumers:

- The consumer must send an OEM a demand letter with a summary of the vehicle’s repair history and alleged problems at least **30 days** before filing suit;
- The consumer must have and maintain possession of the vehicle for at least **30 days** following the pre-suit notice; and
- The consumer may not file suit if an OEM offers to replace or repurchase the vehicle within **30 days** of receiving notice and, in turn, completes the replacement or repurchase within the next **30 days**.^[20]

Finally, AB 1755 shifts prelitigation fees to an OEM or defendant and imposes strict sanctions for noncompliance:

- OEMs must pay reasonable attorneys’ fees and costs if it offers to replace or repurchase a vehicle,^[21] and the defendant must pay reasonable attorneys’ fees and costs if the parties reach a settlement;^[22]
- Plaintiffs’ and defense counsel are subject to \$1,500 and \$2,500 sanctions, respectively, for failure to comply with the document production or deposition requirements;^[23]
- For plaintiffs’ counsel’s repeated noncompliance with the discovery or mediation requirements, the case will be dismissed without prejudice and costs awarded to the defendant;^[24] and
- For defense counsel’s repeated noncompliance with the discovery or mediation requirements, defendant will be precluded from introducing evidence on the effect of the alleged nonconformity or successful repairs.^[25]

AB 1755 drew significant opposition, with consumer groups arguing it weakens protections, while OEMs said it does too little.^[26] In response, the authors of AB 1755 introduced a “clean-up” bill: SB 26.

SB 26’S EFFECT ON AB 1755

SB 26, approved on April 2, 2025, scales back AB 1755. AB 1755’s requirements now apply only to OEMs that *opt into* the new procedures; otherwise, the pre-amendment procedures continue to apply.^[27] OEMs will have to decide, then, whether to test the new procedures or “restore the status quo.”^[28] OEMs must opt in by May 2, 2025, for the procedures to apply to vehicles sold through 2025, and by October 31 for vehicles sold over the next five years (and continue to opt in every five years as they so choose).^[29] OEMs that opt in must disclose which procedures govern each vehicle at the time of sale.^[30] And consumers who demand replacement or repurchase and later resell their vehicle must notify prospective buyers that the vehicle is subject to a lemon law dispute.^[31]

THE FUTURE OF REPLACE-OR-REPURCHASE CLAIMS

While most manufacturers appreciate the flexibility of SB 26 as they “weigh[] the near- and long-term implications” of AB 1755 and find “the best solution for their customer base,”^[32] California lawmakers have their doubts. In an early committee hearing on SB 26, some state senators feared the creation of “two sets of standards,” especially given the purpose behind AB 1755: to *reduce* litigation.^[33] The California legislature thus included a “sunset provision” in

SB 26 to review the effects of AB 1755 and SB 26 in five years.^[34] When approving the bill, Governor Newsom encouraged the legislature to follow through on its promise, as AB 1755 “may not have struck the proper balance for all parties.”^[35]

In its initial form, AB 1755 was an ambitious attempt to streamline warranty claims for consumers in California while protecting OEMs from baseless claims. However, the introduction of SB 26’s opt-in procedure for OEMs, and signals from the majority of OEMs that they do not intend to opt in^[36] (possibly due to the automatic discovery obligations, prelitigation fees, and sanctions under AB 1755), places a large question mark over what effect these amendments will have on Song–Beverly Act claims, if any. In any case, it seems unlikely that many OEMs will look to opt in by the May 2 deadline, potentially waiting until the October 31 deadline to see what effects opt-in may have on those OEMs that do choose to use the new rules.

OEMs still evaluating whether to opt into these procedures must weigh the potentially significant burden of even limited discovery, the threat of prelitigation fees, and a risk of sanctions against the possibility of a quicker resolution of Song–Beverly Act claims and the benefits of additional safeguards against frivolous claims.

For questions on the Song–Beverly Act, including AB 1755 and SB 26, please contact Eric J. Knapp, Roland Hartung, Courtney M. Coppage, or your Winston relationship attorney.

[1] A.B. 1755, 2023–2024 Reg. Sess. (Cal. 2024), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1755.

[2] Assemb. Judiciary Comm., Civil Actions: Restitution for or Replacement of a New Motor Vehicle [AB 1755] 1–2 (Aug. 30, 2024), <https://ajud.assembly.ca.gov/system/files/2024-08/ab-1755-analysis.pdf>.

[3] Letter from Governor of California Gavin Newsom to Members of the California State Assembly (Sept. 29, 2024), <https://www.gov.ca.gov/wp-content/uploads/2024/09/AB-1755-SIGNING-Message.pdf>.

[4] S.B. 26, 2025–2026 Reg. Sess. (Cal. 2024), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB26.

[5] *Leber v. DKD of Davis, Inc.*, 187 Cal. Rptr. 3d 731, 736–37 (Cal. Ct. App. 2015); see Cal. Civ. Code §§ 1791(e), (j), (l) (defining manufacturer, distributor, and retailer).

[6] Cal. Civ. Code §§ 1791.1–2 (defining express warranty as “a written statement” promising “to preserve or maintain the utility or performance of the consumer good or [otherwise] provide compensation” and implied warranty of merchantability as “a guarantee that the particular item is ‘fit for [] ordinary purposes’”).

[7] Cal. Civ. Code § 1793.2(d).

[8] Cal. Civ. Code § 1793.2.

[9] Cal. Civ. Code § 1794.

[10] *Gutierrez v. Carmax Auto Superstores California*, 19 Cal. App. 5th 1234, 1246–247 (2018).

[11] *Dagher v. Ford Motor Co.*, 190 Cal. Rptr. 3d 261, 276 (Cal. Ct. App. 2015) (express warranty); *Miller v. Ford Motor Co.*, 620 F. Supp. 3d 1045, 1067 (E.D. Cal. 2022) (implied warranty).

[12] Cal. Com. Code § 2725.

[13] Cal. Civ. Code § 1795.6.

[14] See A.B. 1755, *supra* note 2, § 871.22(c) (defining “manufacturer” as a person that manufactures, assembles, or produces consumer goods or motor vehicles); *id.* § 871.22(d) (defining “distributor” as a person that stands between a manufacturer and retail seller); *id.* § 871.22(f) (defining “warrantor” as a person that gives or offers to give a written

warranty or is or may be obligated under an implied warranty); *id.* § 871.22(a) (defining “applicable express warranty” as a written warranty, provided by the manufacturer at time of delivery, that covers the alleged nonconformity).

[15] *Id.* § 871.21. These limits are subject to statutory tolling provisions. *Id.* § 871.21(c); see note 19 *supra*.

[16] Discovery is stayed pending mediation; if mediation is unsuccessful, the standard discovery process applies. *Id.* § 871.26(e).

[17] For defendant–entities, the consumer may depose a 30(b)(6) witness on a set list of topics. *Id.* § 871.26(c)(2), (i).

[18] *Id.* § 871.26.

[19] While these changes were intended to go into effect as of April 1, 2025 under AB 1755, SB 26 pushed the start date to July 1, 2025. See S.B. 26, note 6 *supra*, § 871.24(k).

[20] A.B. 1755, *supra* note 2, § 871.24.

[21] *Id.* § 871.24(e).

[22] *Id.* § 871.25.

[23] *Id.* § 871.26(j) (1, 2).

[24] *Id.* § 871.26(j)(3).

[25] *Id.* § 871.26(j)(4) (precluding introduction of evidence at trial on “whether the motor vehicle had a nonconformity that substantially impaired the use, value, or safety of the motor vehicle” or “whether the motor vehicle was repaired to match the written warranty after a reasonable number of opportunities to do so”). In its discretion, a court may also require an attorney to report sanctions to the California State Bar. *Id.* § 871.26(j)(5).

[26] Assemb. Judiciary Comm., *supra* note 3, at 2.

[27] S.B. 26, *supra* note 5, §§ 871.29–.30; see Cal. Dep’t of Consumer Affs., *New Lemon Law Procedures*, https://www.dca.ca.gov/acp/new_lemon_law.shtml (last visited Apr. 18, 2025).

[28] S. Floor Analysis, Civil Actions: Restitution for or Replacement of a New Motor Vehicle [SB 26] 7 (Apr. 1, 2025), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202520260SB26.

[29] S.B. 26, *supra* note 5, §§ 871.29–.30.

[30] *Id.* § 871.29(d).

[31] *Id.* § 871.24(i).

[32] *Civil Actions: Restitution for or Replacement of a New Motor Vehicle: Hearing on SB 26 Before the S. Judiciary Comm.*, 2025–2026 Reg. Sess. 11:24–13:32 (Feb. 11, 2025), <https://www.senate.ca.gov/media-archive>.

[33] *Id.* at 40:47–42:41.

[34] See S. Comm. on Bus., Pros., & Econ. Dev., Civil Actions: Restitution for or Replacement of a New Motor Vehicle [SB 26] 9 (Feb. 28, 2025), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202520260SB26; S.B. 26, *supra* note 5.

[35] Letter from Governor of California Gavin Newsom to Members of the California State Senate (April 2, 2025), <https://www.gov.ca.gov/wp-content/uploads/2025/04/SB-26-Signing-Message.pdf>.

[36] See Assemb. Judiciary Comm., *supra* note 3, at 22 (opposition coalition against AB 1755); S. Floor Analysis, *supra* note 28, 6–7 (support coalition behind SB 26).

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