Several states have consumer warranty laws that are not confined to a particular product, such as manufactured homes or new cars, but are broadly applicable to most consumer products. California’s Song-Beverly Consumer Warranty Act includes a variety of requirements for consumer warranties on new goods that are sold at retail in California. Like the typical new car lemon law, the Act requires the manufacturer to replace a product if it cannot be repaired within a reasonable number of attempts. The consumer must deliver the product to an in-state repair facility within the express warranty period unless the product’s size, weight, or similar factors make delivery unreasonable.

A significant advantage of the Act is that it does not require the consumer to give notice to the warrantor prior to bringing suit. Another major advantage is that it makes the manufacturer of new consumer goods responsible for the implied warranty of merchantability regardless of privity. Most of the Act provides a private cause of action, including civil penalties and attorney fees, for failure to comply. The Act also includes a number of restrictions on disclaimers and other means of avoiding warranties, including a provision, similar to that found in the Magnuson-Moss Warranty Act, prohibiting the disclaimer of implied warranties when the seller provides an express warranty as defined by the statute. It is especially useful in motor home cases because it covers the living quarters of motor homes, which are excluded from the lemon law.

The Act applies only to “consumer goods,” defined as new products that are acquired primarily for personal, family, or household purposes. The definition excludes consumables, but another provision of the Act places a duty upon retailers to provide a replacement or refund, at the retailer’s choice, if, within thirty days of purchase, a buyer returns a consumable that was accompanied by an express warranty. Despite the general definition of “consumer goods” as new goods, one section of the Act explicitly applies to used goods. It provides that the obligation of a seller of used goods in a sale in which an express warranty is given is the same as that imposed on manufacturers, with some exceptions. As the Act prohibits manufacturers that provide express warranties from disclaiming implied warranties for new goods, it appears that this duty therefore applies to sellers of used goods as well. It also provides that, when used goods are sold with an express warranty, implied warranties must last at least as long as the express warranty, but in no event less than thirty days or more than three months. In addition, most of the lemon law provisions of California’s statute apply to a “new motor vehicle,” defined to include one that is still under the manufacturer’s new car warranty when sold. The Act also includes its own definition of “express warranty,” which is somewhat narrower than the UCC definition, and in some ways similar to the Magnuson-Moss Warranty Act’s definition.

An intermediate appellate court decision holds that roofing shingles do not meet the definition of consumer goods because they do not fit into the statutory scheme, which gives the manufacturer three options: repairing the goods on-site, picking them up for repair, or arranging for them to be transported to a repair facility. The court noted that shingles could not be removed from the home and taken to a repair facility without damaging the home, but could only be repaired on-site, so the manufacturer would only have the option of on-site repair. From this fact the court concluded that the legislature could not have intended shingles to fall within the definition of consumer goods. The decision ignores the fact that another part of the statute specifically refers to goods that cannot be returned to the manufacturer because of “size and weight, or method of attachment, or method of installation,” clearly contemplating that such goods are covered. A separate chapter of California’s warranty law requires a written contract when roofing materials are sold with a warranty, and requires certain disclosures.

Oregon has a more limited consumer warranty law, also applicable to almost all new consumer goods. Among other things, it requires the manufacturer to provide a replacement or refund to the consumer if the manufacturer is unable to service or repair the goods in compliance with the warranty.

New Jersey’s Truth-in-Consumer Contract, Warranty, and Notice Act provides the consumer a private cause of action if a seller sells or displays a warranty that violates any consumer right that is clearly established by state or federal law. “Display” includes showing the consumer a third-party warranty in the course of selling the product. The law provides a private cause of action with a civil penalty of up to $100 or actual damages or both to any “aggrieved consumer.” It thus provides a way to remedy illegal warranty terms, even when those terms have not yet been enforced. The consumer must have suffered some form of harm as a result of the defendant’s conduct in order to be “aggrieved,” but the harm need not be monetary. Waiver is prohibited. The statute is remedial and entitled to a broad interpretation.

Footnotes
1.2.6 Broadly Applicable State Consumer Warranty Laws

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19 See § 6.2.4.2.3 [1], infra.


21 [16] See § 2.3.2 [2], infra.


23 [18] See §§ 14.2.3.2.1 [4], 14.2.3.2.2 [5], infra.


1.2.6 Broadly Applicable State Consumer Warranty Laws

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2015) (fact that used car came with manufacturer’s warranty does not prevent dealer from disclaiming its warranties).

30 Cal. Civ. Code § 1795.5(c) (West).


34 {24} Cal. Civ. Code § 1793.2(c) (West).


37 {27} Or. Rev. Stat. § 72.8100.


42 Spade v. Select Comfort Corp., 181 A.3d 969 (N.J. 2018). See also Wilson v. Kia Motors Am., Inc., 2015 WL 3903540 (D.N.J. June 25, 2015) (even if statement that consumer must send notice to manufacturer by certified mail to invoke lemon law rights misstates lemon law, not a violation of New Jersey act when plaintiff did not plead that she intended to invoke lemon law).

43 Spade v. Select Comfort Corp., 181 A.3d 969, 980–981 (N.J. 2018) (stating as an example that a consumer may be “aggrieved” if untimely delivery and a misleading “no refunds” language leave the consumer without furniture needed for a family gathering).


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