

No. S274625

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

---

California Court of Appeal, Fourth District, Division Two, Civil No. E073766  
Appeal from Riverside County Superior Court  
Case No. RIC1807727  
Honorable Jackson Lucky, Judge Presiding

---

**EXHIBITS IN SUPPORT OF  
MOTION FOR JUDICIAL NOTICE  
Volume 4 of 6 / Pages 720 to 929 of 1389**

---

ROSNER, BARRY & BABBITT, LLP  
Hallen D. Rosner, SBN 109740  
*hal@rbblawgroup.com*  
Arlyn L. Escalante, SBN 272645  
*arlyn@rbblawgroup.com*  
10085 Carroll Canyon Road, Ste. 100  
San Diego, California 92131  
(858) 348-1005 / F: (858) 348-1150

KNIGHT LAW GROUP, LLP  
Roger R. Kirnos, SBN 283163  
*rogerk@knightlaw.com*  
10250 Constellation Blvd, Ste 2500  
Los Angeles, California 90067  
(310) 552-2250 / F: (310) 552-7973

GREINES, MARTIN, STEIN & RICHLAND LLP  
\*Cynthia E. Tobisman, SBN 197983  
*ctobisman@gmsr.com*  
Joseph V. Bui, SBN 293256  
*jbui@gmsr.com*  
5900 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90036  
(310) 859-7811 / Fax (310) 276-5261

Attorneys for Petitioners  
EVERARDO RODRIGUEZ and JUDITH V. ARELLANO

**E073766**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO**

---

**EVERARDO RODRIGUEZ et al.,**  
*Plaintiffs and Appellants,*

*v.*

**FCA US, LLC,**  
*Defendant and Respondent.*

---

APPEAL FROM RIVERSIDE COUNTY SUPERIOR COURT  
JACKSON LUCKY, JUDGE • CASE No. RIC1807727

---

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE  
Volume 4 of 5 • Pages 00715 – 00894 of 00923**

---

**HORVITZ & LEVY LLP**  
LISA PERROCHET (BAR No. 132858)  
\*SHANE H. MCKENZIE (BAR No. 228978)  
3601 WEST OLIVE AVENUE, 8TH FLOOR  
BURBANK, CALIFORNIA 91505-4681  
(818) 995-0800 • FAX: (844) 497-6592  
lperrochet@horvitzlevy.com  
smckenzie@horvitzlevy.com

**CLARK HILL LLP**  
DAVID L. BRANDON (BAR No. 105505)  
1055 WEST SEVENTH STREET, 24TH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
(213) 417-5306 • FAX: (213) 488-1178  
dbrandon@clarkhill.com

**CLARK HILL LLP**  
GEORGES A. HADDAD (BAR No. 241785)  
ONE EMBARCADERO CENTER, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 984-8500 • FAX: (415) 984-8599  
ghaddad@clarkhill.com

ATTORNEYS FOR DEFENDANT AND RESPONDENT  
**FCA US, LLC**

Document received by the CA 4th District Court of Appeal Division 2.

**MJN/721**

# DECLARATION OF JAN S. RAYMOND

I, Jan Raymond declare:

I am an attorney licensed to practice by the California State Bar, State Bar number 88703, and admitted to practice in the United States Federal Court for the Eastern District of California. My business is researching legislative history and interpreting legislative intent, I have over 15 years experience in legislative research and analysis of legislative intent.

In cooperation with persons working under my supervision, I undertook to research the legislative history of the following project. All use of the word project in this declaration refers to legislative research addressed to this focus:

**Civil Code Sections 1791(o), 1791.2(a)(1), 1794(a)&(b) & 1795.7**

**In particular:**

**Chapter 1333, Statutes of 1970**

Enacting Civil Code Sections 1791.2(a)(1) and 1794.

**Chapter 1523, Statutes of 1971**

Enacting 1795.5 and amending 1794

**Chapter 169, Statutes of 1974**

Enacting 1795.5(d)

**Chapter 991, Statutes of 1978**

Enacting 1791(o)

**Chapter 385, Statutes of 1982**

Repealing and reenacting 1794

**Chapter 728, Statutes of 1983**

Amending 1795.5

**Chapter 1047, Statutes of 1985**

Amending 1791(o)

**Chapter 1280, Statutes of 1987**

Adding 1793.2(d)(2) and amending 1794

**Chapter 1265, Statutes of 1993**

Amending 1791(o)

**Chapter 196, Statutes of 1998**

Amending 1791(o).

We report in a series of volumes. This Volume 4 contains discussion and materials regarding the 1993 and 1998 enactments.

At all times, all persons working on this project operated under instructions to locate all documents available pertinent to the legislative bill or bills which led to this enactment. This research was compiled in the days immediately prior to the date of this declaration.

(888) 676-1947

**Declaration of Jan Raymond**

**Page 1 of 5**

For definitions of the legislative terms used in this declaration, visit the California law page at

**LEGISLATIVE HISTORY CLEARINGHOUSE**

[www.lhclearinghouse.com](http://www.lhclearinghouse.com)

00718

**MJN/722**

Document received by the CA 4th District Court of Appeal Division 2.

1 and reflects all the documents, and sources available during that time pertinent to this  
2 project.

3 The documents listed are the substantive documents collected pertinent to the history of  
4 this project. The term "substantive documents" as used in the previous sentence refers  
5 to those documents relevant to the scope of the project. Some documents regarding the  
6 legislative bills related to this project may not be forwarded in this report. Documents not  
7 forwarded may include fiscal analyses addressing the budgetary impact of legislation,  
8 documents addressing other portions of legislation not directly relevant to the project,  
9 documents addressing simple support, or opposition to the legislation, or other  
10 documents unlikely to be helpful in understanding the substantive purpose of the  
11 legislation. The complete collection of documents is organized in generally chronological  
12 order and sequentially numbered.

13 All documents listed are included with this declaration, except as otherwise noted in this  
14 declaration. Unless otherwise noted in this declaration all documents were obtained at  
15 one of the following sources; legislative offices at the State Capitol, the California State  
16 Library, the California State Archives, or libraries at the University of California at Davis.  
17 References to "bill file" as used in this declaration refer to files maintained regarding the  
18 legislation that is the subject of the document collection. Some documents copied from  
19 microfilm originals may be of poor quality; all copies included with this report are the best  
20 available copies.

21 In this list of documents the abbreviation SFA is short for Office of Senate Floor  
22 Analyses, and ARC is short for Assembly Republican Caucus.

23 **The following documents accompany this declaration:**

24 **1993 Chapter 1265**

25 Excerpt regarding Senate Bill 798 (Rosenthal) from the Senate Final History,  
26 1993-94 Regular Session. Page 1

27 Excerpt regarding Civil Code Section 1791 from SB 798 as introduced March 4,  
28 1993. Page 3

Senate Committee on Business and Professions Bill Amendment Worksheet on  
SB 798, March 18, 1993, with file documents excerpted from the committee file,  
three pages. Page 8

Consumer Affairs analysis of SB 798 as introduced, found in the bill file of SFA,  
two pages. Page 11

Senate Committee on Business and Professions analysis of SB 798 as  
introduced for hearing April 12, 1993. Page 13

Documents regarding SB 798 as introduced from the bill file of the author, five  
pages. Page 19

---

(888) 676-1947 Declaration of Jan Raymond Page 2 of 5  
For definitions of the legislative terms used in this declaration, visit the California law page at  
LEGISLATIVE HISTORY CLEARINGHOUSE  
www.lhclearinghouse.com

0071

MJN/723

Document received by the CA 4th District Court of Appeal Division 2.

1	<i>SB 798 as amended in the Senate April 27 made no change to the language of Section 1791(o) and is therefore not included in these materials.</i>	
2		
3	Excerpt regarding Civil Code Section 1791 from SB 798 as amended in the Senate May 3, 1993.	Page 24
4	SFA Third Reading analysis of SB 798 as amended May 3, 1993.	Page 30
5	Senate Floor Statement from the bill file of the author, one page.	Page 34
6	Consumer Affairs analysis of SB 798 as amended 5/3, found in the bill file of SFA, two pages.	Page 35
7		
8	Assembly Committee on Consumer Protection, Government Efficiency and Economic Development Background Information Sheet on SB 798, with associated file documents from the committee file, seven pages.	Page 37
9		
10	<i>SB 798 as amended in the Assembly on July 1 and August 16 made no change to the language of Section 1791(o) and are therefore not included in these materials.</i>	
11		
12	Assembly Committee on Consumer Protection, Government Efficiency and Economic Development Republican analysis of SB 798, from the bill file of the ARC, two pages.	Page 43
13		
14	Assembly Committee on Consumer Protection, Government Efficiency and Economic Development analysis of SB 798 as amended July 1, 1993, for hearing July 7.	Page 45
15		
16	Statements regarding SB 798 from the bill file of the author, three pages.	Page 50
17	Consumer Affairs letter and analysis of SB 798 as amended 7/1/93, found in the bill file of ARC, two pages.	Page 53
18		
19	Third Reading floor analysis of SB 798 as amended August 16, 1993.	Page 55
20	Documents regarding SB 798 as amended August 16 from the bill file of the Assembly Committee on Consumer Protection, Government Efficiency and Economic Development and SFA, seven pages.	Page 57
21		
22	Excerpt regarding Civil Code Section 1791 from SB 798 as amended in the Assembly August 30, 1993.	Page 64
23		
24	Third Reading floor analysis of SB 798 as amended August 30, 1993.	Page 70
25	Documents regarding SB 798 as amended August 30 from the bill file of SFA, five pages.	Page 72
26		

(888) 676-1947

**Declaration of Jan Raymond**

Page 3 of 5

For definitions of the legislative terms used in this declaration, visit the California law page at

LEGISLATIVE HISTORY CLEARINGHOUSE

[www.lhclearinghouse.com](http://www.lhclearinghouse.com)

0071

**MJN/724**

Document received by the CA 4th District Court of Appeal Division 2.

1	Statements regarding SB 798 as amended August 30 from the bill file of the author, two pages.	Page 77
2		
3	SFA Unfinished Business analysis of SB 798 as amended 8-30-93.	Page 80
4	Undated documents regarding SB 798 from the bill file of the author, three pages.	Page 85
5		
6	Selected documents regarding SB 798 from the enrolled bill file of former Governor Pete Wilson, five pages.	Page 88
7	Chapter 1265, Statutes of 1993.	Page 93
8	Excerpt regarding Chapter 1265 from the Summary Digest for 1993.	Page 107
9	<b><u>1998 Chapter 196</u></b>	
10	Excerpt regarding Assembly Bill 2704 (Alquist) from the Assembly Final History, 1997-98 Regular Session.	Page 110
11		
12	AB 2704 as introduced February 23, 1998.	Page 112
13	Department of Consumer Affairs analysis of AB 2704 as introduced from the bill file of SFA and ARC, four pages.	Page 116
14		
15	Assembly Republican Bill Analysis of AB 2704 as introduced from the bill file of ARC, two pages.	Page 120
16	Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development analysis of AB 2704 as introduced, for hearing May 5, 1998.	Page 122
17		
18	AB 2704 as amended in the Assembly May 12, 1998.	Page 125
19		
20	Assembly Third Reading floor analysis of AB 2704 as amended May 12, 1998.	Page 129
21	Department of Consumer Affairs analysis of AB 2704 as amended 5/12/98 from the bill files of SFA and ARC, one page.	Page 131
22	AB 2704 as amended in the Senate June 17, 1998.	Page 132
23	Senate Committee on Business and Professions analysis of AB 2704 as amended 6/17/98, for hearing June 22, 1998.	Page 136
24		
25	Department of Consumer Affairs analysis of AB 2704 as amended 6/17/98 from the bill files of SFA and ARC, one page.	Page 139
26		

(888) 676-1947

**Declaration of Jan Raymond**

**Page 4 of 5**

For definitions of the legislative terms used in this declaration, visit the California law page at

LEGISLATIVE HISTORY CLEARINGHOUSE

[www.lhclearinghouse.com](http://www.lhclearinghouse.com)

00719

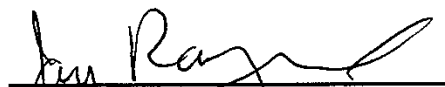
**MJN/725**

Document received by the CA 4th District Court of Appeal Division 2.

1	Document regarding AB 2704 as amended 6/17 from the bill file of the Senate Committee on Business and Professions, two pages.	Page 140
2		
3	AB 2704 as amended in the Senate June 29, 1998.	Page 142
4	SFA Third Reading analysis of AB 2704 as amended June 29, 1998.	Page 146
5	Concurrence in Senate Amendments analysis of AB 2704 as amended June 29, 1998.	Page 150
6		
7	Selected documents regarding AB 2704 from the enrolled bill file of former Governor Pete Wilson, five pages.	Page 152
8	Chapter 196, Statutes of 1998.	Page 157
9		This collection ends with page 161

10 I declare under penalty of perjury the foregoing is true and correct.

11 Executed at Davis California, April 4, 2000.

12   
13 Jan Raymond  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 (888) 676-1947

Declaration of Jan Raymond

Page 5 of 5

28 For definitions of the legislative terms used in this declaration, visit the California law page at

LEGISLATIVE HISTORY CLEARINGHOUSE

[www.lhclearinghouse.com](http://www.lhclearinghouse.com)

00726

MJN/726

Document received by the CA 4th District Court of Appeal Division 2.

**VOLUME 1**  
**CALIFORNIA LEGISLATURE**  
**AT SACRAMENTO**  
**1993-94 REGULAR SESSION**  
**1993-94 FIRST EXTRAORDINARY SESSION**

**SENATE FINAL HISTORY**

**SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS  
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS  
AND SENATE RESOLUTIONS**

**CONVENED DECEMBER 7, 1992**  
**ADJOURNED SINE DIE NOVEMBER 30, 1994**

**DAYS IN SESSION..... 255**  
**CALENDAR DAYS ..... 725**

**LT. GOVERNOR**  
*President of the Senate*

**SENATOR BILL LOCKYER**  
*President pro Tempore*

*Compiled Under the Direction of*  
**RICK ROLLENS**  
*Secretary of the Senate*

*By*  
**DAVID H. KNEALE, ESQ.**  
*History Clerk*

000001

0072

**MJN/727**

Document received by the CA 4th District Court of Appeal Division 2.



## S.B. No. 798—Rosenthal.

An act to amend Sections 9830, 9832, and 9847 of, to amend, repeal, and add Sections 9849, 9851, 9853, 9860, 9863, and 9873 of, to add and repeal Sections 146.5, 9830.5, 9832.5, 9847.5, and 9862.5 of, and to add and repeal Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of, the Business and Professions Code, to amend, repeal, and add Sections 1791 and 1794.4 of the Civil Code, and to amend Section 6254 of the Government Code, relating to electronic and appliance repair.

1993

- Mar. 4—Introduced. Read first time. To Com. on RLS. for assignment. To print.
- Mar. 5—From print. May be acted upon on or after April 4.
- Mar. 18—To Com. on B. & P.
- Mar. 25—Set for hearing April 12.
- April 26—From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 10. Noes 0. Page 624.)
- April 27—Read second time. Amended. Re-referred to Com. on APPR.
- May 3—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- May 6—Set for hearing May 17.
- May 11—Set, first hearing. Hearing canceled at the request of author.
- May 13—Set for hearing May 24.
- June 8—From committee: Be placed on second reading file pursuant to Senate Rule 23.8.
- June 9—Read second time. To third reading.
- June 10—Read third time. Passed. (Ayes 22. Noes 5. Page 1634.) To Assembly.
- June 10—In Assembly. Read first time. Held at Desk.
- June 17—To Com. on C.P., G.E. & E.D.
- July 1—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- July 8—From committee: Do pass, but first be re-referred to Com. on W. & M. (Ayes 9. Noes 1.) Re-referred to Com. on W. & M.
- Aug. 16—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 19—From committee: Do pass. (Ayes 19. Noes 0.)
- Aug. 23—Read second time. To third reading.
- Aug. 30—Read third time. Amended. To third reading.
- Aug. 31—Read third time. Urgency clause adopted. Passed. (Ayes 58. Noes 14. Page 3795.) To Senate.
- Aug. 31—In Senate. To unfinished business.
- Sept. 1—Senate concurs in Assembly amendments. (Ayes 24. Noes 7. Page 3000.) To enrollment.
- Sept. 9—Enrolled. To Governor at 10 a.m.
- Oct. 11—Approved by Governor.
- Oct. 11—Chaptered by Secretary of State. Chapter 1263, Statutes of 1993.

000002

00728

MJN/728

Document received by the CA 4th District Court of Appeal Division 2.

Introduced by Senator Rosenthal

March 4, 1993

An act to amend Sections 9830, 9832, 9847, 9849, 9851, 9853, 9860, 9862, 9863, and 9873 of, to add Article 4.5 (commencing with Section 9855) to Chapter 20 of Division 3 of, the Business and Professions Code, and to amend Sections 1791 and 1794.4 of the Civil Code, relating to electronic and appliance repair.

## LEGISLATIVE COUNSEL'S DIGEST

SB 798, as introduced, Rosenthal. Electronic and appliance repair: service contractors.

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer, as defined, to register with the Bureau of Electronic and Appliance Repair, as specified.

This bill would require the registration of service contractors, as defined, and would prohibit a service contract administrator, as defined, from issuing, selling, or offering for sale a service contract unless he or she is insured under a service contract reimbursement insurance policy, as defined. Among other things, this bill would require the filing of the form of a service contract issued by a service contractor prior to its use and would authorize the Director of Consumer Affairs to invalidate the registration of a service contractor for specified reasons and to investigate complaints against a service contractor. The bill would require a service contractor to pay various registration and renewal fees, as specified.

Existing law requires a service dealer to pay a specified fee for each place of business operated in this state.

This bill would require a service dealer or a service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts

000003

00728

MJN/729

Revised by the CA 4th District Court of Appeal Division 2

in this state, to hold a valid registration and to pay required registration fees.

Existing law permits the sale of a service contract to a buyer, except as specified, in addition to or in lieu of an express warranty if the contract fully discloses the terms, conditions, and exclusions of the contract and the contract contains specified information.

This bill would require the contract to include a clear description of the financial arrangement used by the service contractor to support the obligations covered by the service contract.

Existing law provides that any violation of the Electronic and Appliance Repair Dealer Registration Law is a misdemeanor.

This bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 9830 of the Business and
- 2 Professions Code is amended to read:
- 3 9830. Each service dealer or service contractor shall
- 4 pay the fee required by this chapter for each place of
- 5 business operated by him or her in this state and shall
- 6 register with the bureau upon forms prescribed by the
- 7 director. The forms shall contain sufficient information to
- 8 identify the service dealer or service contractor,
- 9 including name, address, retail seller's permit number if
- 10 a permit is required under the Sales and Use Tax Law
- 11 ~~(Part 1, commencing with Section 6001, of Division 2 of~~
- 12 ~~the Revenue and Taxation Code, a copy of the certificate~~
- 13 ~~of qualification as filed with the Secretary of State if the~~

000004

98-120

1 read:

2 1791. As used in this chapter:

3 (a) "Consumer goods" means any new product or part  
4 thereof that is used, bought, or leased for use primarily for  
5 personal, family, or household purposes, except for  
6 clothing and consumables. "Consumer goods" shall  
7 include new and used assistive devices sold at retail.

8 (b) "Buyer" or "retail buyer" means any individual  
9 who buys consumer goods from a person engaged in the  
10 business of manufacturing, distributing, or selling such  
11 goods at retail. As used in this subdivision, "person"  
12 means any individual, partnership, corporation,  
13 association, or other legal entity which engages in any  
14 such business.

15 (c) "Clothing" means any wearing apparel, worn for  
16 any purpose, including under and outer garments, shoes,  
17 and accessories composed primarily of woven material,  
18 natural or synthetic yarn, fiber, or leather or similar  
19 fabric.

20 (d) "Consumables" means any product which is  
21 intended for consumption by individuals, or use by  
22 individuals for purposes of personal care or in the  
23 performance of services ordinarily rendered within the  
24 household, and which usually is consumed or expended in  
25 the course of such consumption or use.

26 (e) "Distributor" means any individual, partnership,  
27 corporation, association, or other legal relationship which  
28 stands between the manufacturer and the retail seller in  
29 purchases, consignments, or contracts for sale of  
30 consumer goods.

31 (f) "Independent repair or service facility" or  
32 "independent service dealer" means any individual,  
33 partnership, corporation, association, or other legal  
34 entity, not an employee or subsidiary of a manufacturer  
35 or distributor, which engages in the business of servicing  
36 and repairing consumer goods.

37 (g) "Lease" means any contract for the lease or  
38 bailment for the use of consumer goods by an individual,  
39 for a term exceeding four months, primarily for personal,  
40 family, or household purposes, whether or not it is agreed

99 310  
000005



1 that the lessee bears the risk of the consumer goods'  
2 depreciation.

3 (h) "Lessee" means an individual who leases  
4 consumer goods under a lease.

5 (i) "Lessor" means a person who regularly leases  
6 consumer goods under a lease.

7 (j) "Manufacturer" means any individual,  
8 partnership, corporation, association, or other legal  
9 relationship which manufactures, assembles, or produces  
10 consumer goods.

11 (k) "Place of business" means, for the purposes of any  
12 retail seller that sells consumer goods by catalog or mail  
13 order, the distribution point for such goods.

14 (l) "Retail seller," "seller," or "retailer" means any  
15 individual, partnership, corporation, association, or other  
16 legal relationship which engages in the business of selling  
17 or leasing consumer goods to retail buyers.

18 (m) "Return to the retail seller" means, for the  
19 purposes of any retail seller that sells consumer goods by  
20 catalog or mail order, the retail seller's place of business,  
21 as defined in subdivision (k).

22 (n) "Sale" means (1) the passing of title from the  
23 seller to the buyer for a price, or (2) a consignment for  
24 sale.

25 (o) "Service contract" means a contract in writing to  
26 perform, over a fixed period of time or for a specified  
27 duration, services relating to the maintenance or repair  
28 of a consumer product, except that this term does not  
29 include a policy of automobile insurance, as defined in  
30 Section 116 of the Insurance Code.

31 (p) "Service contract administrator" or  
32 "administrator" means a person who issues, makes,  
33 provides, or offers to provide a service contract to a  
34 service contract seller.

35 (q) "Service contract seller" means a person who sells  
36 or offers to sell a service contract to a service contract  
37 holder.

38 (r) "Service contractor" means a service contract  
39 administrator or a service contract seller.

40 (s) "Assistive device" means any instrument,

000006

99 330

MJN/732

1 apparatus, or contrivance, including any component or  
2 part thereof or accessory thereto, which is used or  
3 intended to be used, to assist a physically disabled person  
4 in the mitigation or treatment of an injury or disease or  
5 to assist or affect or replace the structure or any function  
6 of the body of a physically disabled person, except that  
7 this term does not include prescriptive lenses and other  
8 ophthalmic goods unless they are sold or dispensed to a  
9 blind person, as defined in Section 19153 of the Welfare  
10 and Institutions Code and unless they are intended to  
11 assist the limited vision of the person so disabled.

12 ~~(s)~~

13 (t) "Catalog or similar sale" means a sale in which  
14 neither the seller nor any employee or agent of the seller  
15 nor any person related to the seller nor any person with  
16 a financial interest in the sale participates in the diagnosis  
17 of the buyer's condition or in the selection or fitting of the  
18 device.

19 ~~(r)~~

20 (u) "Home appliance" means any refrigerator,  
21 freezer, range, microwave oven, washer, dryer,  
22 dishwasher, garbage disposal, trash compactor, or room  
23 ~~air conditioner~~ *air-conditioner* normally used or sold for  
24 personal, family, or household purposes.

25 ~~(s)~~

26 (v) "Home electronic product" means any television,  
27 radio, antenna rotator, audio or video recorder or  
28 playback equipment, video camera, video game, video  
29 monitor, computer equipment, telephone,  
30 telecommunications equipment, electronic alarm  
31 system, electronic appliance control system, or other  
32 kind of electronic product, if it is normally used or sold  
33 for personal, family, or household purposes. The term  
34 includes any electronic accessory that is normally used or  
35 sold with a home electronic product for one of those  
36 purposes. The term excludes any single product with a  
37 wholesale price to the retail seller of less than fifty dollars  
38 (\$50).

39 SEC. 13. Section 1794.4 of the Civil Code is amended  
40 to read:

99 360

000007

00727

MJN/733

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00729

**MJN/734**

document received by the CA 4th District Court of Appeal Division 2.

April 1 is amendment deadline

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS  
Daniel Boatwright, Chairman

BILL AMENDMENT WORKSHEET

(Please complete & return immediately)

[Notice: Bills will not be set for hearing until the attached worksheet and this form are properly completed and returned.]

Setting of Bills: The Committee will not set a bill until it is specifically requested by author's office.

DATE (Hand delivered): MAR 18 1993, 1993 TO: Sen. Rosenthal

BILL NUMBER: SB 798 HEARING DATE: Apr. 12

IS THIS BILL PROPOSED TO BE AMENDED? YES ☒ NO ☐

RE: AUTHOR'S AMENDMENTS PRIOR TO HEARING --- DEADLINES

An author may amend a bill prior to a hearing, however, author's amendments MUST be submitted to the committee secretary, IN LEGISLATIVE COUNSEL FORM and signed by the author, at least eleven (11) calendar days prior to the hearing at which the bill is set. Therefore, amendments must be submitted to the committee secretary (IN LEGISLATIVE COUNSEL FORM) no later than 12:00 p.m. (noon) on Thursday, 11 days prior to the hearing. This procedure will enable committee staff to analyze the bill and to have the amended version in print before the hearing.

Bills for which substantive or significant amendments are submitted later than this deadline will be taken off calendar, unless the author obtains approval directly from the committee chairman!

[NOTE: As soon as you are aware that the bill is proposed to, or is likely to, be amended --- Please inform the committee consultant and, if possible, provide even non-Legislative Counsel form draft amendments.]

CONTACT PERSON(S) & Phone #(s)  
YOUR OFFICE

Lynelle Jolley - 445-7928

CONTACT PERSON(S) & Phone #(s)  
SOURCE/PROPONENT'S OFFICE

Please return to: Senate Committee on Business and Professions  
State Capitol, Room 5046  
Sacramento, CA 95814  
(916) 445-3435 (telephone)  
(916) 324-0917 (fax)

000008

00729

MJN/735

Document received by the CA 4th District Court of Appeal Division 2.



**BACKGROUND INFORMATION ON SB 798 (ROSENTHAL):**

1. **Source:** Sen. Rosenthal first introduced service contract legislation after hearing of problems in this area while carrying a used car warranty bill in 89/90. This new approach, which does not cover auto service contracts, reflects consensus reached at meetings conducted last Fall by the Bureau of Electronic and Appliance Repair (DCA) involving industry reps and one consumer group (Center for Public Interest Law). Industry groups included California Retailers Association (Bob Shillito, 443-1975), the Service Contract Industry Council (Scott Jenkins, 904-681-1058), and the Electronics Industries Assn (Terrance Miller, 213-761-8296).

**Previous legislation:**

AB 3374, 1992 (Epple)--to regulate auto service contracts under DOI, among other things (vetoed).

SB 2086, 1990 (Rosenthal)--to expand required disclosures on service contracts to include cost and terms of payment as well as the risk of loss due to bankruptcy of the contractor (failed).

AB 2226, 1990 (Epple)--to require that a non-auto service contract could not duplicate coverage under mfr. warranty (vetoed).

AB 4468, 1988 (Elder)--to require insurance to protect service contract holders from loss in the event of bankruptcy by the contractor or disappearance of the vendor (vetoed).

AB 4570, 1988 (Duplissea)--to extend provisions of AB 2285 (1985) to cover electronics and home appliances (chaptered).

SB 859, 1985 (Torres)--to require seller to disclose if it's under Chapter 11 protection (died).

AB 2285, 1985 (Moore)--to require certain disclosures for auto service contracts, including buyer's refund and cancellation rights (chaptered).

SB 1361, 1978 (Zenovich)--to regulate service contracts under DOI (failed).

**Interim report:** None

2. **Problem bill seeks to address:** Present law does not regulate the issuance of service contracts except through disclosure provisions of the Song-Beverly Consumer Warranty Act (Civil Code Sec. 1791 et seq). There are no requirements that service contractors guarantee the performance of the contracts for the life of the contracts, nor to disclose to consumers the identity of the party financially responsible for the performance of the contracts. This bill would require 3rd party administered contracts to be insured by a California-licensed insurance company, and would require all other service contracts to disclose to consumers the party financially responsible for the performance of the contract.

000009

00736

**MJN/736**

Document received by the CA 4th District Court of Appeal Division 2.

**3. Background materials:** Attachments include articles, letters, and press releases relating to the bankruptcy of an Oklahoma-based service contractor (EWC), and its repercussions for California retailers and consumers; materials describing the effect on service contracts of the bankruptcy filing of Leo's Stereo Stores and Handy Andy's in California; articles outlining generally the problems with service contracts, including what can happen when large retailers who sell their own service contracts go bankrupt (such as Macy's).

**Legislation elsewhere:** Attached materials describe laws in New York (proposed), Connecticut (proposed), Virginia, Florida, Georgia, New Jersey, and Oregon. Also attached is a description of a federal proposal, HR 3592 of 1990, which did not pass. [HR 3592 would have imposed a 60% excise tax on sellers of service contracts not backed by state insurance reserve requirements unless they disclosed a loss ratio--the percentage of contract's price budgeted to pay for repairs).

**4. Support/opposition:** None yet received.

**5. Amendments:** The only substantive amendment planned would amend Sec. 9855.7 and 9855.8 to more precisely define the grounds for the director to refuse to invalidate or to temporarily or permanently invalidate the registration of a service contractor, and to provide for a step-by-step disciplinary process for violations of Sections 9855.3(a) and 9855.5. (Draft to be submitted to Leg. Counsel attached).

**6. Witnesses:**

Bureau of Electronic & Appliance Repair  
Consumers Union  
Service Contract Industry Council  
California Retailers Assn.  
Electronic Industries Assn.

000010

0073

MJN/737

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00738

**MJN/738**

Document received by the CA 4th District Court of Appeal Division 2.

ANALYST NAME: Maria Trujillo  
PHONE NUMBER: 322-1203

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department

Bill Number

Author

CONSUMER AFFAIRS

Rosenthal

SB 798

Sponsor

Related

Bills

Amended Date

Calif. Retailers Assn.

None

Intro

Subject

Electronic and Appliance Repair: Service Contractors

BILL SUMMARY

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer to register with the Bureau of Electronic and Appliance Repair (BEAR).

*This will*  
~~SB 798 would require the registration of service contractors and would prohibit a service contract administrator from issuing, selling or offering for sale a service contract unless he or she is insured under a service contract reimbursement insurance policy. This bill would require third party administered contracts to be insured by a California-licensed insurance company, and would require all other service contracts to disclose to consumers the party financially responsible for the performance of the contract.~~ *STF*

BACKGROUND

*and requires*  
The sale of service contracts for appliances and consumer electronics has become a multi-million dollar business in the state of California. Although the Song-Beverly Consumer Warranty Act (Civil Code § 1791, et seq.) provides for proper disclosure procedures, only consumers who purchase contracts from BEAR registrants have recourse for addressing complaints arising from violations of that Act, according to BEAR regulation 2711 (c). This covers only about 50 percent of service contract sales. There are no requirements that service contractors guarantee the performance of the contracts for the life of the contracts or that they disclose to consumers the party who is financially responsible for the performance of the contracts.

In addition, there are no legal requirements concerning the insurance of the financial viability of contracts. Several major sellers of service contracts, including \*EWC\* and Component Guard, have gone out of business within the past twelve months, leaving hundreds of thousands of California consumers holding worthless contracts.

FEE / X /		FISCAL / X /		REPORT / /	
DEPARTMENTS THAT MAY BE AFFECTED					
Bureau of Electronic and Appliance Repair					
STATE MANDATE / X /		GOVERNOR'S APPOINTMENT / /			
DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		GOVERNOR'S	
OFFICE USE					
<input checked="" type="checkbox"/> S	<input type="checkbox"/> O	<input checked="" type="checkbox"/> S	<input type="checkbox"/> O	POSITION APPROVD.	
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	POSITION DISAPP.	
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	POSITION NOTED	
<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	<input type="checkbox"/> NIA	<input type="checkbox"/> NAR		
<input type="checkbox"/> DEFER		<input type="checkbox"/> DEFER			
DEPARTMENT DIRECTOR DATE:		AGENCY SECRETARY DATE:			
<i>Charmelle Smith 9/2</i>		<i>Original Signed By JEANNE MYERS Deputy Secretary</i>		APR 7 1993	

000011

0073

MJN/739

Document received by the CA 4th District Court of Appeals Division 2.

SPECIFIC FINDINGS

SB 798 would create a registration program similar to the one the BEAR manages for electronic and appliance repair dealers. It would require all sellers of service contracts to register with the BEAR by paying a fee. It would authorize the BEAR to require that its name and address be imprinted on every contract. SB 798 would also authorize the BEAR to investigate and mediate complaints arising from violation of the Song-Beverly Consumer Warranty Act.

The BEAR estimates that there are approximately 10,000 potential registrants in California as well as out-of-state who would be required to comply. Should this bill be chaptered, it would become effective January 1, 1994. The BEAR would be required to adopt regulations in order to implement registration effective July 1, 1994.

The initial and annual renewal fee would have to be established. There would also be enforcement costs which are indeterminate at this time.

FISCAL IMPACT

The Department of Consumer Affairs' Budget Office has prepared the attached fiscal analysis on SB 798.

INTERESTED PARTIES AND ARGUMENTS

Proponents: Consumers Union  
California Retailers Association (Sponsor)  
Service Contract Industry Council  
Electronics Industries Association

Opponents: None identified to date.

Proponents argue that this bill would ensure that a consumer has some recourse if the service contractor fails to comply with the terms of the service contract and it would require that service contractors are insured for all obligations and liabilities they incur.

RECOMMENDATION

The Department of Consumer Affairs recommends a SUPPORT position on SB 798.

000012

00734

MJN/740

Document received by the CA 4th District Court of Appeal Division 2.

SENATE COMMITTEE ON  
BUSINESS AND PROFESSIONS  
Senator Daniel Boatwright, Chairman

BILL NO.: SB 798  
AUTHOR: Rosenthal  
As Introduced: 4/4/93

HEARING DATE: April 12, 1993

FISCAL: Yes

SUBJECT: Department of Consumer Affairs: Bureau of Electronic and Appliance Repair (BEAR); state regulation of service contractors and registration; imposition of license fees.

DIGEST:

Existing law provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Existing law creates within the DCA the Bureau of Electronic and Appliance Repair (BEAR) which is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service dealer businesses.

Existing provisions of the Song-Beverly Consumer Warranty Act (Act) define a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance. (Civil Code § 1791 et seq.) The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds, and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.

Existing law provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill would provide for the licensing and regulation of "service contract administrators" and "service contract sellers" (service contractors) by the Bureau of Electronic and Appliance Repair (BEAR) of the Department of Consumer Affairs. The bill would provide for the payment of license fees by service contractors to the BEAR for deposit into the Electronic and Appliance Repair Fund (special fund).

This bill would also define:

- 1) "Service contract administrator" or "administrator" as a person who issues, makes, provides, or offers to

000013

0073

MJN/741

Document received by the CA 4th District Court of Appeal Division 2.

provide a service contract to a service contract seller;

- 2) "Service contract seller" as a person who sells or offers to sell a service contract to a service contract holder;
- 3) "Service contract holder" as the person who purchases a service contract from a service contract seller;
- 4) "Service contractor" as either a service contract administrator or service contract seller;
- 5) "Service contract reimbursement insurance policy" as a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contractor under the terms of the service contracts sold in this state by the service contractor to the service contract holder; and
- 6) "Service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a set or appliance (as defined).

This bill would prohibit a service contract administrator from issuing, selling, or offering for sale a service contract unless he or she is insured under a service reimbursement insurance policy, and require service contracts to disclose to the consumer the party financially responsible for the performance of the service contract.

This bill also would provide that a service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, appliance industry or sells or issues service contracts in this state is subject to licensure and shall pay the required license fees as if he or she had a place of business in this state.

This bill would make related changes to the Song-Beverly Consumer Warranty Act relating to the regulation of service contractors.

**FISCAL EFFECT:**

Unknown. This is a fiscal bill. There would be increased costs to the Bureau of Electronic and Appliance Repair for the creation of a new licensing program and related enforcement cases. This bill would also authorize the assessment of fees which may offset these new costs.

**COMMENTS:**

1. This bill is sponsored by the author because current law does not regulate the issuance of service contracts except through the

000014

0073

MJN/742

Document received by the CA 4th District Court of Appeal Division 2.



disclosure provisions of the Song-Beverly Consumer Warranty Act. The author states there are currently no requirements that service contractors must guarantee the performance of the contracts for the life of the contracts, nor disclose to the consumers the identity of the party financially responsible for the performance of the service contracts. The sponsor states this bill would require 3rd-party administered contracts to be insured by a California-licensed insurance company, and would require all other service contracts to disclose to consumers the party financially responsible for the performance of the contract.

2. New licensing program: state's major budget deficit and start-up costs; insufficient fund reserves

This bill would create a new licensing authority under the Director of the Department of Consumer Affairs and within the Bureau of Electronic and Appliance Repair (BEAR). The BEAR is a special fund program which receives all of its funding from license fees which are deposited into the "Electronic and Appliance Repair Fund."

Beginning with the 1991 Budget Act, the Electronic and Appliance Repair Fund has become a repository of revenues for the support of the State's General Fund. Section 14.00 of the 1991/92 Budget Act authorized a transfer of special fund revenues "in excess of a 3 month reserve" into the General Fund. On June 30, 1992, approximately \$417,000 from the Electronic and Appliance Repair Fund was transferred into the General Fund. Similarly, the current 1992 Budget Act authorizes an additional \$282,000 transfer from the Electronic and Appliance Repair Fund to the State's General Fund pursuant to 3 separate Budget control sections (i.e., \$ 3.70 Personal Leave Program Savings \$23,000; \$ 14.00 Three Month Reserve Excess \$220,000; and \$ 14.75 Interest Earnings \$39,000). In the last two Budget Acts, the Electronic and Appliance Repair Fund will have been targeted for a total "raid" of approximately \$699,000.

The Legislative Analyst's Office (LAO) has generally recommended that all special funds within the Department of Consumer Affairs should maintain a prudent reserve sufficient to cover any contingencies and unanticipated reductions in revenue collections and unforeseen expenditures. The LAO has set a standard that an amount equal to approximately 3 months' operating expenses (or about 25% of annual expenditures) should be maintained. However, the LAO states that agencies which receive predictable and evenly distributed revenues can operate with lower reserves (down to about 15% of annual expenditures) without running into cash flow problems.

The fund condition for the Bureau of Electronic and Appliance Repair indicates that it will have a reserve fund balance in the 1993/94 budget year of approximately \$52,000; or approximately a 1/2 month reserve. The provisions of this bill contain no appropriation for the start-up costs to implement the provisions of the "service contractor" licensing program and there are no reserves in the Electronic and Appliance Fund for deficiency funding at this time. The Business and Professions Committee may want to consider to what

000015

0073

MJN/743

Document received by the CA 4th District Court of Appeal Division 2.



extent the Bureau of Electronic and Appliance Repair may be able to effectively enforce the provisions of this bill without a specific appropriation. The Department of Consumer Affairs has not provided the Business and Professions Committee with any workload or cost projections related to this bill nor is there a projection on the amount of new revenue this bill would raise for the Electronic and Appliance Repair Fund.

Given the state's massive budget deficit and the special fund transfers from the Electronic and Appliance Repair Fund to the General Fund, this bill's authorization to collect fees may increase revenues for the support of the Department of Consumer Affairs and the State's General Fund, and thereby delaying the implementation of an aggressive enforcement program for the regulation of service contractors.

**3. Legislative Analyst Recommendations: BEAR**

In the analysis of the 1993/94 Budget, the LAO has recommended the enactment of legislation to remove the state's regulatory role over several consumer-related business activities (special fund savings of \$33 million "fungible with the General Fund" [emphasis added]).

The LAO recommended, based on its criteria, the elimination of 13 boards, bureaus, and regulatory functions. The LAO states that for many of these functions, such as barbering, cosmetology, **appliance repair** [emphasis added] and home furnishing, the risk to consumers is small, and it does not appear that continued state regulation and enforcement is warranted. Furthermore, the LAO indicated it is not suggesting that the state have no role to play in the regulatory areas which are proposed to be eliminated. Consumers would still have various protections provided through state laws (such as contract disclosure) and other remedies (such as through the judicial system). The LAO also states that consumers would still have information available on the competency of individuals providing services through various professional and nonprofit organizations.

Given the state's budget deficit, the possible transfers of special fund revenues to the General Fund, the existing fund condition of the Bureau of Electronic and Appliance Repair, the LAO's recommendations to eliminate the Bureau of Electronic and Appliance Repair, and lack of workload data and costs for this program, the Business and Professions Committee may want to consider the compelling reasons to regulate service contractors through a new licensing program at this time.

**4. History of attempts to regulate service contracts**

AB 2285 (Moore - Chapter 1047, Statutes of 1985) authorized the sale of service contracts covering motor vehicles as long as the contracts disclose the terms, conditions and exclusions as well as the buyer's cancellation and refund rights. AB 2285 provided that service contracts be made available for inspection by the buyer

000016

0073

MJN/744

Document received by the CA 4th District Court of Appeal Division 2.

before purchase and be delivered to the buyer within 60 days of purchase. The bill also mandated buyer refund rights as a result of a contract cancellation.

AB 4570 (Duplissea - Chapter 582, Statutes of 1988) extended the provisions of AB 2285 (Moore) to include service contracts sold on a home appliance or home electronic product to make certain disclosures and to contain specific information.

AB 4468 (Elder) was vetoed in 1988 and would have required any 3rd-party administrators providing a service contract for consumer goods, other than motor vehicles, to obtain a service contract reimbursement policy of insurance coverage from a liability insurer admitted to do business in this state in an amount sufficient to indemnify the purchase of the service contract for any foreseeable losses under the service contract.

AB 2226 (Epple) was vetoed in 1990 and would have prohibited service contracts from duplicating express warranty coverages on home appliances and home electronic products.

SB 2086 (Rosenthal) failed passage in 1990 and would have required service contracts to contain information relating to the protection of the buyer from loss in the event of bankruptcy or insolvency of the service contract seller.

AB 3374 (Epple) was vetoed in 1992 and would have provided for a comprehensive scheme for the regulation of motor vehicle service contract administrators subject to the jurisdiction of and regulation by the Insurance Commissioner. The Governor's veto message of AB 3374 stated:

..."The department of insurance does not have the experience to carry out the increased enforcement burden contemplated by this bill. Moreover, I believe that enforcement of these contracts is best carried out by the Department of Consumer Affairs, which has expertise in the auto repair field which is not matched by the Department of Insurance..."

##### 5. Service Contracts

Service contracts are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

000017

00739

MJN/745

Document received by the CA 4th District Court of Appeal Division 2.

**Support and Opposition:**

**Support:** Author (sponsor)

**Opposition:** None received

The Department of Consumer Affairs has not taken a position on this bill as yet.

**Consultant:** Michael G. Gomez

000018

00746

**MJN/746**

Document received by the CA 4th District Court of Appeal Division 2.

STATEMENT ON SB 798 (SERVICE CONTRACTS)

SENATE BUSINESS & PROFESSIONS COMMITTEE, 4/12/93

THIS BILL DEALS WITH THE PROBLEM OF COMPANIES THAT SELL SERVICE CONTRACTS ON ELECTRONIC EQUIPMENT OR HOME APPLIANCES AND THEN GO OUT OF BUSINESS. THE CONSUMER IS LEFT HOLDING A WORTHLESS CONTRACT, A LOSS THAT IS COMPOUNDED IF THE ITEM THAT WAS SUPPOSED TO BE COVERED ACTUALLY BREAKS DOWN.

THIS IS NOT SOME PROBLEM THAT HAPPENS ONCE IN AWHILE -- IT HAPPENS A LOT. THE ELECTRONICS RETAILING INDUSTRY IS HIGHLY COMPETITIVE, AND BANKRUPTCIES ARE NOT UNCOMMON. EXAMPLES INCLUDE SUCH CHAIN STORES AS LEO'S STEREO, FEDERATED, PACIFIC STEREO, UNIVERSITY STEREO, AND HANDY ANDY'S, AS WELL AS DEPARTMENT STORES SUCH AS GEMCO, ZODY'S, AND MACY'S. ALSO, MANY RETAILERS SELL EXTENDED WARRANTIES THROUGH A THIRD-PARTY. WHEN ONE OF THE BIGGEST SERVICE CONTRACTORS IN THE NATION WENT BANKRUPT THREE YEARS AGO -- IT WAS E.W.C., BASED IN OKLAHOMA -- SEVERAL STATES STARTED TO TIGHTEN THEIR REQUIREMENTS FOR SELLING SERVICE CONTRACTS.

THERE ARE RESPONSIBLE MEMBERS OF THE SERVICE CONTRACT COMMUNITY WHO WANT TO SEE THIS PROBLEM CLEANED UP. IF IT'S NOT, THE ALTERNATIVE MAY WELL BE THE DEMISE OF SERVICE CONTRACTS, WHICH WOULD NOT BE SUCH A BAD IDEA. CONSUMER GROUPS HAVE OFTEN WARNED AGAINST BUYING SERVICE CONTRACTS, SINCE MOST OF THE MONEY GOES TO THE SELLER, NOT TO REPAIR THE ITEMS BEING INSURED.

RATHER THAN FIGHT A LOSING BATTLE TO OUTLAW SERVICE CONTRACTS, I WOULD LIKE TO AT LEAST SEE THE CONSUMERS WHO BUY THEM PROTECTED. THAT IS WHY I'VE INTRODUCED THIS BILL, WHICH IS A VERY MODEST PROPOSAL.

000019

0074

MJN/747

Document received by the CA 4th District Court of Appeal Division 2.

BASICALLY, SB 798 EXPANDS THE DEPT OF CONSUMER AFFAIR'S AUTHORITY TO ADMINISTER AND ENFORCE THE SONG-BEVERLY ACT WITH RESPECT TO SERVICE CONTRACTS. A SIMPLE REGISTRATION SYSTEM IS SET UP, AND [THIRD-PARTY ADMINISTERED SERVICE CONTRACTS ARE REQUIRED TO BE BACKED BY INSURANCE.] ALL ~~OTHERS~~ WOULD BE REQUIRED TO MAKE CERTAIN DISCLOSURES TO THE CONTRACT BUYER. ALTHOUGH THE BILL CURRENTLY ASSIGNS ENFORCEMENT TO THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, I AM AMENDING IT TO GIVE THAT POWER TO THE DIRECTOR OF THE DEPT. OF CONSUMER AFFAIRS, WHO CAN DECIDE THE MOST EFFICIENT WAY TO MANAGE THE PROGRAM.

I'VE INVITED SOME EXPERT WITNESSES FROM THE DEPARTMENT OF CONSUMER AFFAIRS TO TESTIFY ABOUT THE EXTENT OF ~~THE SERVICE CONTRACT~~ <sup>THIS</sup> PROBLEM AND THE SOLUTIONS THAT HAVE BEEN PROPOSED.

\* To be amended so that one of the 3 following tests would need to be met in order for a business to sell a service contract (i.e. in order to be registered) -

- 1) have a large net worth, as evidenced by a filing with the SEC (the amount of that net worth to be decided);
- 2) service contract backed by insurer admitted to do business in this state; or
- 3) Demonstrate to the Dept. a funded reserve sufficient to pay claims of service contracts.

000020

0074

MJN/748

Document received by the CA 4th District Court of Appeal Division 2.

STATEMENT BY MARTY KELLER ON SB 798 (SERVICE CONTRACTS)

SENATE BUSINESS & PROFESSIONS COMMITTEE, 4/12/93

GOOD AFTERNOON. MY NAME IS MARTY KELLER, AND I AM CHIEF OF THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR IN THE DEPARTMENT OF CONSUMER AFFAIRS. WHEN I STARTED THIS JOB TWO YEARS AGO, DIRECTOR JIM CONRAN ASKED ME TO INVESTIGATE THE PROBLEMS IN THE SERVICE CONTRACT AREA. I LISTENED TO CONSUMERS, REPAIR SERVICERS, RETAILERS, THIRD PARTY ADMINISTRATORS, MANUFACTURERS, AND LEGISLATORS AND REGULATORS FROM OTHER STATES. AS A RESULT, I DEVELOPED A UNDERSTANDING OF THE SCOPE OF THE PROBLEM. WHEN EWC, REFERRED TO BY SENATOR ROSENTHAL IN HIS STATEMENT, WENT BANKRUPT IN 1991, FLORIDA REGULATORS ESTIMATED THAT THE NUMBER OF CONSUMERS LEFT HOLDING WORTHLESS SERVICE CONTRACTS IN THE STATE OF CALIFORNIA MAY HAVE TOPPED 500,000. AT AN AVERAGE PRICE OF \$100 PER CONTRACT, CALIFORNIA CONSUMERS LOST \$50,000,000. AND THAT'S FROM JUST ONE COMPANY. YET WHEN CALIFORNIA CONSUMERS OR SERVICE DEALERS CONTACTED OUR AGENCY TO COMPLAIN ABOUT THE NON-PERFORMANCE OF THEIR EWC CONTRACTS, ALL WE COULD DO WAS REFER THEM TO THE BANKRUPTCY COURT IN OKLAHOMA CITY.

INDUSTRY SOURCES ESTIMATE THAT THE ANNUAL RETAIL VOLUME OF SERVICE CONTRACTS SOLD ON CONSUMER ELECTRONICS AND MAJOR HOME APPLIANCES IN THE STATE OF CALIFORNIA EXCEEDS \$250,000,000. AND THE VOLUME OF SERVICE CONTRACT SALES IS GROWING. ACCORDING TO THE INDUSTRY MAGAZINE THIS WEEK IN CONSUMER ELECTRONICS, SERVICE CONTRACT ADMINISTRATORS EXPERIENCED A 25-30% GROWTH IN SALES IN CALENDAR 1992. SO MUCH MONEY IS INVOLVED IN SERVICE CONTRACT SALES THAT MAJOR CORPORATIONS LIKE GENERAL ELECTRIC AND ITT HAVE JUMPED INTO THE BUSINESS.

000021

0074

MJN/749

Document received by the CA 4th District Court of Appeal Division 2.

SINCE THE VAST MAJORITY OF SERVICE CONTRACTS ARE SOLD AT THE SAME TIME THE UNIT OR APPLIANCE COVERED IS PURCHASED, CONSUMERS FACE TWO QUESTIONS WHEN DECIDING WHETHER TO PURCHASE A SERVICE CONTRACT. ONE, HOW DO THEY KNOW EXACTLY WHAT REPAIR SERVICE GUARANTEES THEY ARE BUYING? AND TWO, WHAT IS THE LIKELIHOOD THAT THE SERVICE CONTRACT WILL BE HONORED THROUGH THE LENGTH OF THE CONTRACT PERIOD?

80% OF SERVICE CONTRACTS ARE SOLD BY MANUFACTURERS AND RETAILERS THROUGH HIGH VOLUME OUTLETS; THE BALANCE ARE SOLD BY SMALL AND MEDIUM RETAILERS AND SERVICERS MARKETING A THIRD PARTY PRODUCT. MOST THIRD PARTY ADMINISTRATORS, BUT NOT ALL, INSURE THEIR CONTRACTS THROUGH A BEST A-1 RATED INSURANCE COMPANY. THESE POLICIES GENERALLY GUARANTEE THAT THE PROVISIONS OF THE SERVICE CONTRACT WILL BE HONORED EVEN IN THE EVENT OF THE BANKRUPTCY OF THE SERVICE CONTRACT ADMINISTRATOR. EWC INSURED THEIR CONTRACTS WITH A SHELL COMPANY SET UP TO MEET THE REQUIREMENTS OF FLORIDA LAW; CONSEQUENTLY NONE OF THEIR CONTRACTS WERE ACTUALLY INSURED, AND CONSUMERS AND SERVICE DEALERS WERE LEFT HOLDING THE BAG. HAD THIS BILL BEEN IN PLACE WHEN EWC WAS IN BUSINESS, THIS COULD NOT HAVE HAPPENED HERE. MOST SERVICE CONTRACTS SOLD DIRECTLY BY MANUFACTURERS AND RETAILERS ARE SELF-INSURED, EITHER THROUGH RESERVE ACCOUNTS OR OTHER LIABILITY ACCOUNTING MECHANISMS.

THE STATE'S SONG-BEVERLY CONSUMER WARRANTY ACT IN THE CIVIL CODE REQUIRES CERTAIN DISCLOSURES TO CONSUMERS, INCLUDING THE EXPRESS DURATION OF THE CONTRACT, RIGHTS OF TRANSFER OR ASSIGNMENT, A STATEMENT OF THE GENERAL OBLIGATION OF THE SERVICE CONTRACTOR TO PERFORM REPAIR SERVICES, AN EXPLANATION OF HOW THE BUYER MAY OBTAIN REPAIR SERVICES UNDER THE CONTRACT, AND CANCELLATION RIGHTS. THE LAW FURTHER REQUIRES THAT THE CONTRACT ITSELF BE

000022

0074

MJN/750

Document received by the CA 4th District Court of Appeal Division 2.

DELIVERED TO THE PURCHASER WITHIN SIXTY DAYS OF THE PURCHASE. BUT THE LAW NEGLECTS TO REQUIRE DISCLOSURE TO CONSUMERS EXACTLY WHO IS FINANCIALLY RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICE CONTRACT. FURTHER, NO STATE AGENCY HAS AUTHORITY TO ENFORCE THE DISCLOSURE PROVISIONS OF SONG-BEVERLY.

LAST SEPTEMBER I CONVENED A MEETING OF REPRESENTATIVES OF ALL GROUPS INVOLVED IN SERVICE CONTRACT SALES TO ADDRESS THE OUTSTANDING PROBLEMS FACING CONSUMERS IN THE PURCHASE OF SERVICE CONTRACTS. PARTICIPANTS INCLUDED THE ELECTRONICS INDUSTRIES ASSOCIATION, THOMPSON ELECTRONICS, THE CALIFORNIA RETAILERS ASSOCIATION, SEARS, CIRCUIT CITY, SILO, THE SERVICE CONTRACT INDUSTRY COUNCIL, THE NATIONAL ASSOCIATION OF SERVICE DEALERS, THE CALIFORNIA STATE ELECTRONICS ASSOCIATION, THE INDEPENDENT WARRANTY SERVICERS, AND THE CENTER FOR PUBLIC INTEREST LAW. THE BILL BEFORE YOU IS A RESULT OF THE CONSENSUS REACHED BY THAT GROUP.

SENATOR ROSENTHAL HAS DESCRIBED THE ESSENCE OF THIS BILL. IT WILL NOT SOLVE ALL THE PROBLEMS, BUT IT WILL GIVE CONSUMERS THE SAME RECOURSE THEY NOW HAVE WHEN THEY HAVE PROBLEMS WITH REPAIR SERVICERS, AND IT WILL GIVE THEM GREATER DISCLOSURE OF EXACTLY WHO IS PROMISING WHAT UNDER A SERVICE CONTRACT.

I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.



**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00748

**MJN/752**

document received by the CA 4th District Court of Appeal Division 2.

AMENDED IN SENATE MAY 3, 1993  
AMENDED IN SENATE APRIL 27, 1993

**SENATE BILL**

**No. 798**

**Introduced by Senator Rosenthal**

March 4, 1993

---

An act to amend Sections 146, 9830, 9832, 9847, 9849, 9851, 9853, 9860, 9862, 9863, and 9873 of, to add Article 4.5 (commencing with Section 9855) to Chapter 20 of Division 3 of, the Business and Professions Code, and to amend Sections 1791 and 1794.4 of the Civil Code, relating to electronic and appliance repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 798, as amended, Rosenthal. Electronic and appliance repair: service contractors.

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer, as defined, to register with the Bureau of Electronic and Appliance Repair, as specified.

This bill would require the registration of service contractors, as defined, and would prohibit a service contract administrator, as defined, from issuing, ~~selling, or offering for sale~~ *making, underwriting, or managing* a service contract unless he or she is insured under a service contract reimbursement insurance policy, as defined. Among other things, this bill would require the filing of the form of a service contract issued by a service contractor prior to its use and would authorize the Director of Consumer Affairs to invalidate the registration of a service contractor for specified reasons and to investigate complaints against a service contractor. The bill would require a service contractor to pay various registration and renewal fees, as specified.

000024

97 80

0074

**MJN/753**

Existing law requires a service dealer to pay a specified fee for each place of business operated in this state.

This bill would require a service dealer or a service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts in this state, to hold a valid registration and to pay required registration fees.

Existing law permits the sale of a service contract to a buyer, except as specified, in addition to or in lieu of an express warranty if the contract fully discloses the terms, conditions, and exclusions of the contract and the contract contains specified information.

This bill would require the contract to include a ~~clear description of the financial arrangement used by the service contractor to support the obligations covered by the service contract~~ *statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.*

*The bill would set forth grounds for various citations and administrative fines, as specified.*

Existing law provides that any violation of the Electronic and Appliance Repair Dealer Registration Law is a misdemeanor.

This bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1.   *Section 146 of the Business and*  
2     *Professions Code is amended to read:*

3     146. (a) Notwithstanding any other provision of law,  
4     a violation of any code section listed in subdivision (c) is  
5     an infraction subject to the procedures described in  
6     Sections 19.6 and 19.7 of the Penal Code when:

7         (1) A complaint or a written notice to appear in court  
8         pursuant to Chapter 5c (commencing with Section 853.5)  
9         of Title 3 of Part 2 of the Penal Code is filed in court  
10        charging the offense as an infraction unless the  
11        defendant, at the time he or she is arraigned, after being  
12        advised of his or her rights, elects to have the case  
13        proceed as a misdemeanor, or

14        (2) The court, with the consent of the defendant and  
15        the prosecution, determines that the offense is an  
16        infraction in which event the case shall proceed as if the  
17        defendant has been arraigned on an infraction complaint.

18        (b) Subdivision (a) does not apply to a violation of the  
19        code sections listed in subdivision (c) if the defendant has  
20        had his or her license, registration, or certificate  
21        previously revoked or suspended.

22        (c) The following sections require registration,  
23        licensure, certification, or other authorization in order to  
24        engage in certain businesses or professions regulated by  
25        this code:

- 26        (1) Section 2630.
- 27        (2) Section 2903.
- 28        (3) Sections 3760 and 3761.
- 29        (4) Section 4825.
- 30        (5) Section 4980.
- 31        (6) Section 4996.
- 32        (7) Section 5536.
- 33        (8) Section 6704.
- 34        (9) Section 6980.10.
- 35        (10) Section 7317.
- 36        (11) Section 7502 or 7592.
- 37        (12) Section 7617 or 7641.
- 38        (13) Subdivision (a) of Section 7872.

000026

97 130

00749

MJN/755



1 dollars (\$235) *for each place of business in this state.*

2 (3) The annual renewal fee for a service dealer who  
3 engages in the electronic repair industry and the  
4 appliance repair industry and is a service contractor is not  
5 more than two hundred ninety-five dollars (\$295) *for*  
6 *each place of business in this state.*

7 A service dealer or service contractor who does not  
8 operate a place of business in this state, but who engages  
9 in the electronic repair industry, the appliance repair  
10 industry, or sells or issues service contracts in this state  
11 shall pay the registration fee specified herein as if he or  
12 she had a place of business in this state.

13 (c) The delinquency fee is an amount equal to 50  
14 percent of the renewal fee for such license in effect on  
15 the date of renewal of the license, except as otherwise  
16 provided in Section 163.5.

17 SEC. 12. Section 1791 of the Civil Code is amended to  
18 read:

19 1791. As used in this chapter:

20 (a) "Consumer goods" means any new product or part  
21 thereof that is used, bought, or leased for use primarily for  
22 personal, family, or household purposes, except for  
23 clothing and consumables. "Consumer goods" shall  
24 include new and used assistive devices sold at retail.

25 (b) "Buyer" or "retail buyer" means any individual  
26 who buys consumer goods from a person engaged in the  
27 business of manufacturing, distributing, or selling such  
28 goods at retail. As used in this subdivision, "person"  
29 means any individual, partnership, corporation,  
30 association, or other legal entity which engages in any  
31 such business.

32 (c) "Clothing" means any wearing apparel, worn for  
33 any purpose, including under and outer garments, shoes,  
34 and accessories composed primarily of woven material,  
35 natural or synthetic yarn, fiber, or leather or similar  
36 fabric.

37 (d) "Consumables" means any product which is  
38 intended for consumption by individuals, or use by  
39 individuals for purposes of personal care or in the  
40 performance of services ordinarily rendered within the

000027

97 390

MJN/756

1 household, and which usually is consumed or expended in  
2 the course of such consumption or use.

3 (e) "Distributor" means any individual, partnership,  
4 corporation, association, or other legal relationship which  
5 stands between the manufacturer and the retail seller in  
6 purchases, consignments, or contracts for sale of  
7 consumer goods.

8 (f) "Independent repair or service facility" or  
9 "independent service dealer" means any individual,  
10 partnership, corporation, association, or other legal  
11 entity, not an employee or subsidiary of a manufacturer  
12 or distributor, which engages in the business of servicing  
13 and repairing consumer goods.

14 (g) "Lease" means any contract for the lease or  
15 bailment for the use of consumer goods by an individual,  
16 for a term exceeding four months, primarily for personal,  
17 family, or household purposes, whether or not it is agreed  
18 that the lessee bears the risk of the consumer goods'  
19 depreciation.

20 (h) "Lessee" means an individual who leases  
21 consumer goods under a lease.

22 (i) "Lessor" means a person who regularly leases  
23 consumer goods under a lease.

24 (j) "Manufacturer" means any individual,  
25 partnership, corporation, association, or other legal  
26 relationship which manufactures, assembles, or produces  
27 consumer goods.

28 (k) "Place of business" means, for the purposes of any  
29 retail seller that sells consumer goods by catalog or mail  
30 order, the distribution point for such goods.

31 (l) "Retail seller," "seller," or "retailer" means any  
32 individual, partnership, corporation, association, or other  
33 legal relationship which engages in the business of selling  
34 or leasing consumer goods to retail buyers.

35 (m) "Return to the retail seller" means, for the  
36 purposes of any retail seller that sells consumer goods by  
37 catalog or mail order, the retail seller's place of business,  
38 as defined in subdivision (k).

39 (n) "Sale" means (1) the passing of title from the  
40 seller to the buyer for a price, or (2) a consignment for

000028

97 390

0075E

MJN/757

1 sale.

2 (o) "Service contract" means a contract in writing to  
3 perform, *for an additional cost*, over a fixed period of  
4 time or for a specified duration, services relating to the  
5 maintenance or repair of a consumer product, except  
6 that this term does not include a policy of automobile  
7 insurance, as defined in Section 116 of the Insurance  
8 Code.

9 (p) "Service contract administrator" or  
10 "administrator" means a person *other than the seller*  
11 who issues, makes, ~~provides, or offers to provide~~  
12 *underwrites, or manages* a service contract ~~to a service~~  
13 ~~contract seller~~ *and who is legally and financially*  
14 *responsible to perform the services specified in the*  
15 *contract.*

16 (q) "Service contract seller" or "seller" means a  
17 person who sells or offers to sell ~~a either his or her own~~  
18 *service contract or an administrator's service contract* to  
19 a service contract holder.

20 (r) "Service contractor" means a service contract  
21 administrator or a service contract seller.

22 (s) "Assistive device" means any instrument,  
23 apparatus, or contrivance, including any component or  
24 part thereof or accessory thereto, which is used or  
25 intended to be used, to assist a physically disabled person  
26 in the mitigation or treatment of an injury or disease or  
27 to assist or affect or replace the structure or any function  
28 of the body of a physically disabled person, except that  
29 this term does not include prescriptive lenses and other  
30 ophthalmic goods unless they are sold or dispensed to a  
31 blind person, as defined in Section 19153 of the Welfare  
32 and Institutions Code and unless they are intended to  
33 assist the limited vision of the person so disabled.

34 (t) "Catalog or similar sale" means a sale in which  
35 neither the seller nor any employee or agent of the seller  
36 nor any person related to the seller nor any person with  
37 a financial interest in the sale participates in the diagnosis  
38 of the buyer's condition or in the selection or fitting of the  
39 device.

40 (u) "Home appliance" means any refrigerator,

000029

97 410

MJN/758

Document received by the CA 4th District Court of Appeal on 11/11/11

## THIRD READING

<b>SENATE RULES COMMITTEE</b>  Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Bill No. SB 798  Author: Rosenthal (D)  Amended: 5/3/93  Vote Required: 21
---	--

Committee Votes:

Senate Floor Vote:

COMMITTEE: BUSINESS & PROF.		
BILL NO.: SB 798		
DATE OF HEARING: 4-12-93		
SENATORS:	AYE	NO
Avala	✓	
Craven	✓	
Greene	✓	
Hart	✓	
Kelley	✓	
Killea	✓	
Marks		
McCorquodale	✓	
Rosenthal	✓	
Lewis (VC)	✓	
Boatwright (Ch)	✓	
TOTAL:	10	0

PLACED  
ON FILE  
PURSUANT  
TO SENATE  
RULE 28.8

Assembly Floor Vote:

**SUBJECT:** Electronic and appliance repair: service contractors

**SOURCE:** Author

**DIGEST:** This bill requires the registration of service contractors and prohibits a service contract administrator from issuing, making, underwriting, or managing a service contract unless he or she is insured under a service contract reimbursement insurance policy. This bill requires service contracts to disclose to consumers the party financially responsible for the performance of the contract.

**ANALYSIS:** Existing law provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Existing law creates within the DCA the Bureau of Electronic and Appliance Repair (BEAR) which is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service dealer businesses.

Existing provisions of the Song-Beverly Consumer Warranty Act, define a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance. (Civil Code Section 1791 et seq.) The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds, and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.

000030

CONTINUED

0075

MJN/759

Document received by the CA 4th District Court of Appeal Division 2.



Existing law provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill would provide for the regulation of service contractors by BEAR of the DCA. The bill would provide for the payment of registration fees by service contractors to the BEAR for deposit into the Electronic and Appliance Repair Fund (special fund).

This bill would also define:

1. "Service contract administrator" or "administrator" as a person who issues, makes, underwrites, or manages a service contract and who is legally and financially responsible to perform the service.
2. "Service contract seller" as a person who sells or offers to sell either its own service contract or an administrator's service contract to a service contract holder;
3. "Service contract holder" as the person who purchases a service contract from a service contract seller;
4. "Service contractor" as either a service contract administrator or service contract seller;
5. "Service contract reimbursement insurance policy" as a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contractor under the terms of the service contracts sold in this state by the service contractor to the service contract holder. Requires the policy to either cover all service contracts sold or specifically cover contracts sold to California residents; and
6. "Service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a set or appliance (as defined).

This bill would prohibit a service contract administrator from issuing, making, underwriting or managing a service contract unless he or she is insured under a service reimbursement insurance policy, and require service contracts to contain a statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the person's name and address.

This bill also would provide that a service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, appliance industry or sells or issues service contracts in this state is subject to licensure and shall pay the required license fees as if he or she had a place of business in this state.

This bill sets forth grounds for various citations and administrative fees.

This bill would make related changes to the Song-Beverly Consumer Warranty Act relating to the regulation of service contractors.

000031

CONTINUED  
0075

MJN/760

Document received by the Court of Appeals on 2.

Comment

Service contracts are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

Prior Legislation

AB 2285 (Moore - Chapter 1047, Statutes of 1985) authorized the sale of service contracts covering motor vehicles as long as the contracts disclose the terms, conditions and exclusions as well as the buyer's cancellation and refund rights. AB 2285 provided that service contracts be made available for inspection by the buyer before purchase and be delivered to the buyer within 60 days of purchase. The bill also mandated buyer refund rights as a result of a contract cancellation.

AB 4570 (Duplissea - Chapter 582, Statutes of 1988) extended the provisions of AB 2285 (Moore) to include service contracts sold on a home appliance or home electronic product to make certain disclosures and to contain specific information.

AB 4468 (Elder) was vetoed in 1988 and would have required any 3rd-party administrators providing a service contract for consumer goods, other than motor vehicles, to obtain a service contract reimbursement policy of insurance coverage from a liability insurer admitted to do business in this state in an amount sufficient to indemnify the purchase of the service contract for any foreseeable losses under the service contract.

AB 2226 (Epple) was vetoed in 1990 and would have prohibited service contracts from duplicating express warranty coverages on home appliances and home electronic products.

SB 2086 (Rosenthal) failed passage in 1990 and would have required service contracts to contain information relating to the protection of the buyer from loss in the event of bankruptcy or insolvency of the service contract seller.

AB 3374 (Epple) was vetoed in 1992 and would have provided for a comprehensive scheme for the regulation of motor vehicle service contract administrators subject to the jurisdiction of and regulation by the Insurance Commissioner. The Governor's veto message of AB 3374 stated:

"The department of insurance does not have the experience to carry out the increased enforcement burden contemplated by this bill. Moreover, I believe that enforcement of these contracts is best carried out by the Department of Consumer Affairs, which has expertise in the auto repair field which is not matched by the Department of Insurance..."

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

SUPPORT: (Verified 6/3/93)

Department of Consumer Affairs

000032

CONTINUED

0075

MJN/761

Document received by the 4th District Court of Appeal Division 2.

ARGUMENTS IN SUPPORT: According to the Department of Consumer Affairs:

Currently, only 50 percent of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act.

Currently, nothing requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

SB 798 would ensure that a consumer is informed, and has recourse if the service contractor fails to comply with the terms of the service for all obligations and liabilities they incur.

CP:lm 6/3/93 Senate Floor Analyses

000033

0075

MJN/762

Document received by the CA 4th District Court of Appeal Division 2.

SENATE FLOOR STATEMENT ON SB 798 -- SERVICE CONTRACTS

PROBLEMS IN THE AREA OF SERVICE CONTRACTS HAVE PROMPTED MANY BILLS OVER THE YEARS, BUT TO DATE THERE STILL ARE NOT ANY REQUIREMENTS THAT SERVICE CONTRACTORS GUARANTEE THE PERFORMANCE OF THE CONTRACTS, NOR DISCLOSE TO THE BUYER THE IDENTITY OF THE PARTY FINANCIALLY RESPONSIBLE FOR PERFORMANCE OF THE CONTRACT.

THIS BILL WOULD CHANGE THAT. IT REQUIRES SELLERS OF SERVICE CONTRACTS TO BE REGISTERED, AND SETS OUT CERTAIN REQUIREMENTS THEY MUST MEET IN ORDER TO BE REGISTERED. THESE REQUIREMENTS WOULD SCREEN OUT UNDERFUNDED AND FRAUDULENT COMPANIES, THEREBY PROVIDING GREATER ASSURANCE THAT IF YOU BUY A SERVICE CONTRACT, THE COMPANY WILL BE AROUND TO BACK IT UP SHOULD THE PRODUCT FAIL.

I WILL BE AMENDING THE BILL FURTHER IN THE ASSEMBLY TO REFLECT A RECENT AGREEMENT ON SPECIFIC LANGUAGE. I AM VERY ENCOURAGED BY THE PROGRESS THAT'S BEEN MADE ON THIS ISSUE, AND THE FACT THAT THERE'S NO OPPOSITION.

I ASK FOR YOUR AYE VOTE.

000034

0075

MJN/763

Document received by the CA 4th District Court of Appeal Division 2.

ANALYST NAME: Dennis Weber  
PHONE NUMBER: 322-1203

**STATE AND CONSUMER SERVICES AGENCY**

**NO ANALYSIS REQUIRED**

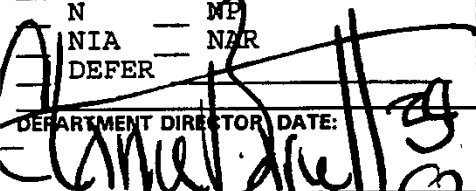
Department	Author	Bill Number
CONSUMER AFFAIRS	Rosenthal	SB 798
Sponsor	Related Bills	Amended Date
Calif. Retailers Assn.	None	5-3-93
Subject		
Electronic and Appliance Repair: Service Contractors		

Existing law known as the Electronic and Appliance Repair Dealers Registration Law requires a service dealer to register with the Bureau of Electronic and Appliance Repair (BEAR).

SB 798, as amended May 3, 1993, would require registration of service contractors and would prohibit a service contract administrator from making, underwriting, or managing a service contract unless he or she is insured under a service contract reimbursement insurance policy. This bill would require third-party administered contracts to be insured by a California-licensed insurance company, and would require all other service contracts to disclose to consumers the party financially responsible for the performance of the contract.

Amendments to the bill would also set forth grounds for various citations and administrative fines. These amendments strengthen and clarify enforcement provisions of the bill.

These amendments of May 3, 1993 do not change our previous recommendation of SUPPORT on SB 798.

FEE /X/		FISCAL /X/		REPORT / /	
DEPARTMENTS THAT MAY BE AFFECTED					
Bureau of Electronic Appliance Repair					
STATE MANDATE / /			GOVERNOR'S APPOINTMENT / /		
DEPARTMENT DIRECTOR POSITION			AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE
<input checked="" type="checkbox"/> S <input type="checkbox"/> O			<input checked="" type="checkbox"/> S <input type="checkbox"/> O		POSITION APPROVD. <input checked="" type="checkbox"/>
<input type="checkbox"/> SIA <input type="checkbox"/> OUA			<input type="checkbox"/> SIA <input type="checkbox"/> OUA		POSITION DISAPP. <input type="checkbox"/>
<input type="checkbox"/> N <input type="checkbox"/> NP			<input type="checkbox"/> N <input type="checkbox"/> NP		POSITION NOTED <input type="checkbox"/>
<input type="checkbox"/> NIA <input type="checkbox"/> NAR			<input type="checkbox"/> NIA <input type="checkbox"/> NAR		
<input type="checkbox"/> DEFER			<input type="checkbox"/> DEFER		
DEPARTMENT DIRECTOR DATE:			AGENCY SECRETARY DATE:		
			MAY 24 1993		
Original Signed By			JEANNE MOORE		
Deputy Secretary					

000035

km 5/27

0075

**MJN/764**

document received by the CA 4th District Court of Appeal Division 2

ASSEMBLY COMMITTEE ON CONSUMER PRO., GOVT. EFFICIENCY & ECON. DEVELOP  
Jackie Speier, Chair

BACKGROUND INFORMATION REQUEST

Measure: SB 798

Author: Senator Rosenthal

Origin of the bill:

*Lynelle Jolley 445-7928*  
*DCA Marty Keller DCA*

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? *574-2040(2052)*
- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
- c. Has there been an interim committee report on the bill? If so, please identify the report.

What is the problem or deficiency in the present law which the bill seeks to remedy?

Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

List the witnesses you plan to have testify.

TURN THIS FORM TO: ASSEMBLY COMMITTEE ON CONSUMER PRO., GOVT. EFFICIENCY  
ECON. DEVELOP  
Phone 324-7440 *Rm. 4121*

STAFF PERSON TO CONTACT:

*Michael Miller*

**NOTE:** ORIGINAL (SIGNED) AND 7 COPIES OF LEGISLATIVE COUNSEL  
AMENDMENTS MUST BE RECEIVED BY THE COMMITTEE ON WEDNESDAY,  
NOON, 7 DAYS PRIOR TO HEARING DATE OF BILL.

PLEASE ATTACH SENATE POLICY, FISCAL (WHEN APPLICABLE) AND

000036

0075

MJN/765

Document received by the CA 4th District Court of Appeal Division 2.

**BACKGROUND INFORMATION ON SB 798 (ROSENTHAL):**

**1. Source:** The author (Dept. of Consumer Affairs has been the major drafter of this bill, with input from the Dept. of Insurance).

**Previous legislation:**

AB 3374, 1992 (Epple)--to regulate auto service contracts under DOI, among other things (vetoed).

SB 2086, 1990 (Rosenthal)--to expand required disclosures on service contracts to include cost and terms of payment as well as the risk of loss due to bankruptcy of the contractor (failed).

AB 2226, 1990 (Epple)--to require that a non-auto service contract could not duplicate coverage under mfr. warranty (vetoed).

AB 4468, 1988 (Elder)--to require insurance to protect service contract holders from loss in the event of bankruptcy by the contractor or disappearance of the vendor (vetoed).

AB 4570, 1988 (Duplissea)--to extend provisions of AB 2285 (1985) to cover electronics and home appliances (chaptered).

SB 859, 1985 (Torres)--to require seller to disclose if it's under Chapter 11 protection (died).

AB 2285, 1985 (Moore)--to require certain disclosures for auto service contracts, including buyer's refund and cancellation rights (chaptered).

SB 1361, 1978 (Zenovich)--to regulate service contracts under DOI (failed).

**Interim report:** None

**2. Problem bill seeks to address:** Present law does not regulate the issuance of service contracts except through limited disclosure provisions of the Song-Beverly Consumer Warranty Act (Civil Code Sec. 1791 et seq). There are no requirements that service contractors guarantee the performance of the contracts, nor to disclose to consumers the identity of the party financially responsible to cover claims made against a contract in the event of bankruptcy.

There have been many examples of retailers who sold service contracts on their products who subsequently filed for bankruptcy, leaving contract holders with worthless contracts and potentially high repair bills on the items that their contract was supposed to cover. Examples include Leo's Stereo, Federated, Pacific Stereo, University Stereo, Handy Andy's, Gemco, Zody's, and Macy's.

Some retailers sell service contracts through a third-party. When one of the biggest third-party service contractors in the nation went bankrupt three years ago (Oklahoma-based EWC), an estimated 500,000 California consumers were left holding worthless contracts. State law currently provides no remedy for these consumers.

000037

00766

**MJN/766**

Document received by the CA 4th District Court of Appeal Division 2.



SB 798 would require all sellers of service contracts to be registered with the Dept. of Consumer Affairs (\$60 annual fee for each location where contracts sold). To register, a seller would have to meet certain requirements (details are described in the amendments below) which would need to be verified annually to DCA at the time of registration and/or renewal. These requirements are meant to prevent underfunded or fraudulent companies from selling contracts in the first place. The bill also would require the contract to disclose the party legally responsible for performance of the contract.

Note: This bill does not cover automotive service contracts.

**3. Background materials:** Attachments include articles outlining generally the problems with service contracts; materials relating to the bankruptcy of Oklahoma-based service contractor EWC; materials describing the effect on service contract holders of the bankruptcy of Leo's Stereo and Handy Andy's in California.

**4. Support/opposition:** Dept. of Consumer Affairs supports (Bureau of Electronic and Appliance Repair drafted bill for us).

The groups we've been working with on this (retailers, manufacturers, service contract industry) are waiting to send support letters if and when we finalize agreement on amendments, described below.

Consumers Union has not taken a formal position since they traditionally have advised against purchasing service contracts.

**5. Amendments:** The proposed amendments generally do 3 things:

- 1) Sunset the bill's provisions (1/1/98).
- 2) Revise penalty provisions for violations by a service contract seller so that minor, first-time infractions do not result in revocation of registration.
- 3) Set 3 requirements for registration; seller must meet one them: demonstrate net worth greater than sum of revenues from service contracts in force; sell contracts backed by insurer admitted to do business in California; or maintain reserve account equal to at least 25% of revenues from contracts in force.

**6. Witnesses:**

Dept. of Consumer Affairs  
perhaps some industry reps.

000038

0076

MJN/767

Document received by the CA 4th District Court of Appeal Division 2.

# No Guarantee Behind Sales of Extended Warranties

■ **Business:** When products that are reliable are backed by firms that fail, many such contracts are useless.

By DENISE GELLEN  
TIMES STAFF WRITER

Joe Lugo did not hesitate when the salesman at a Fontana electronics store suggested that he purchase an extended warranty for his new \$899 Pioneer laser disc player. The 27-year-old Santa Ana interpreter had saved for a year to buy the electronic equipment, and he wanted to avoid costly repairs.

What Lugo failed to anticipate was that his expensive warranty and his laser disc player would both malfunction. The Oklahoma City company that backed Lugo's warranty sought bankruptcy protection in July, leaving him with a useless \$200 warranty and an \$85 repair bill.

Continued from A1  
California's Consumer Affairs Department. He is among officials in several states who may seek legislation to protect consumers when warranty sellers fail. "It is an enormous problem," he said.

The extended warranty mess has not dampened sales. One of every three VCRs, camcorders and washing machines purchased this holiday season included an extended warranty, usually giving owners from one to five years' coverage on parts and labor beyond what the manufacturer provides. With expensive items, such as \$2,000 projection TVs, four out of five consumers snap up warranties. It is little wonder sales are strong. In the cutthroat electronics and appliance business, where failures and bankruptcies are routine, warranties stand out as an oasis of profit. Many retailers push them aggressively, sometimes using tactics that skirt the law. Most retailers make more on the warranties for an item such as a big-screen television than they do on the sale of the television itself.

One reason warranties are so profitable is that consumers rarely use them. Although consumers shelled out an estimated \$10 billion last year for extended warranties, much of that money seems to have been wasted because appliances rarely break down. Studies have shown that fewer than one in five people who buy a warranty ever call to have their product serviced. For people who, like Lugo, try to use their warranties, the loss is compounded as the roster of defunct chains grows. Pacific Stereo, Fedmart Stores, Gemco and Zody's are a few chains that have disappeared from the California marketplace over the last five years. The demise of Crazy Eddie's electronics chain in the East left 100,000 consumers with worthless extended warranties.

The shakeout in the intensely competitive electronics industry is leaving millions of consumers who bought extended warranties for peace of mind with financial headaches.

Last summer's demise of Oklahoma City-based EWC Inc. amid charges that its chairman looted the company socked 3.2 million consumers with an estimated repair tab totalling \$55 million. The collapse of the Long Beach-based Leo's Stereo electronics chain later that month came as a powerful aftershock in Southern California, leaving thousands more consumers with useless warranties.

"A lot of people have lost a lot of money," said Curt Augustine of

Please see PRODUCTS, A25

Since they were first offered 60 years ago by RCA on television sets, warranties have mushroomed from a sideline into a huge business, becoming as ubiquitous as TVs themselves. Virtually every company that makes or sells home or office equipment peddles extended warranties. Although most commonly associated with electronics, extended warranties are also sold for dishwashers, dryers, computers and fax machines. There are extended warranties for cars, and even for homes.

What few consumers realize is that only a handful of companies set aside funds to cover warranty repairs. This means that when a warranty provider goes under, there is usually nothing for the thousands of consumers who not only lose what they paid for a warranty, but get hit with repair costs, too.

Such was the case with EWC Inc. Although little known outside the industry, EWC was one of the nation's largest warranty companies. It sold extended warranties through 200 Southern California retailers, including Ken Crane's electronic stores. It also sold manufacturers warranties on such brands as Go-Video VCRs, Curtis Mathes televisions and Lennox Industries air-conditioning equipment.

Rather than set aside money for repairs, EWC used revenue from new warranty sales to pay repair bills. The strategy worked until a recession hit the electronics industry and put a crimp in new warranty sales. Unable to sell enough warranties to cover repairs, EWC's cash dried up. According to EWC's court-appointed bankruptcy trustee, EWC needed to sell 10 million to 12 million extended warranties to cover repair claims on the 3 million outstanding warranties—a target difficult to hit even in good times.

The company's weakened finances were not helped by its chairman's alleged habit of dipping into EWC's treasury to support a flamboyant lifestyle that until this year included a lavish annual Christmas party at his \$1-million Oklahoma City gated estate. EWC's nationwide work force was fanned in at company expense to attend a fête that last year featured palm trees incongruously transplanted in ankle-deep snow.

Trustee Gary Morrissey is suing EWC Chairman David W. Trice and several family members to recover \$796,000 that he alleges they owe the mortally wounded company. Trice could not be reached for comment, but his attorney, Jerry Sepkowitz of Oklahoma City, said Trice concedes that he owes some of the disputed amount.

As in most other warranty-related bankruptcies, EWC's customers will not benefit from any settlement. As unsecured creditors, consumers are last in line to collect anything as EWC tries to sort out the finances under bankruptcy law

protection. Many of these people will not learn that their warranties are worthless until their appliance breaks down and they, like Lugo, try to get it fixed. "I feel ripped off," said Lugo, who purchased his warranty at Space Video in Fontana.

No one knows how many millions of consumers have been victimized by the spate of bankruptcies in the electronics industry. The giants in the extended warranty business, such as Sears, Roebuck & Co. and General Electric, maintain that their customers have nothing to fear.

"You have to look at the reputation of the [warranty] seller," said Stan Knipe, vice president of product services for Sears, which is said to take in nearly \$1 billion a year from extended warranties, also known as service contracts.

Some companies, including Ken Crane's and Go-Video, say they will absorb repair costs for customers who purchased EWC warranties from them. But many smaller outfits, such as Appliance Unlimited of Newhall, say they cannot afford to help out their customers. Royce Smith, owner of the one-store operation, estimates that it would take \$100,000 to cover repair costs over the next five years.

However, most consumers tend not to use their warranties because their appliances do not break down. The life expectancy of a VCR or television set is closely guarded by the electronics industry, which computes longevity with the precision of a life insurance actuary.

Although she would not give away trade secrets, Susanne Schneider, vice president of operations of the Torrance-based warranty company Elite Group Inc., said electronic equipment usually becomes obsolete and is replaced before it breaks down.

Consumers Union, the Yonkers, N.Y.-based publisher of Consumer Reports, advises consumers to pass up extended warranties unless the device being purchased uses a new and untested technology or is known to have a terrible repair history.

Bill McGuire, an editor at the magazine, suggests that consumers concerned about repair costs regularly deposit money into a repair fund. If the appliance never breaks, the repair fund can be used for other things.

It is hard for cautious consumers to say no to extended warranties. Sales people are instructed to pitch the extended warranties and remind consumers of how much repairs can cost. "We know if we explain it to our customers properly, some will buy," said Dick Stubbs, chief of the electronics division manager for Macy's California, the R.H. Macy's division that runs the Bullock's department store chain.

People who turn down extended warranties at the time of purchase find that the sales pitch follows them home. Sears and GE have telemarketing programs that prod consumers into taking extended warranties. Silo mails customers slick brochures that warn: "There's no such thing as a minor repair," and provide sampling of not-so-minor repair costs: \$211 for a new microwave timer, \$336.10 for a color TV picture tube, \$122.50 for a refrigerator ice maker.

Rebecca Breverman, director of financial services for the Silo electronics chain, said the brochure is meant to "refresh the customer's memory" about how much repairs could cost and is not intended to alarm. "Whether it seems scary is a matter of interpretation," she said.

Law enforcement agencies have occasionally cracked down on overzealous sales tactics. Last year, Silo agreed to refund \$49.95 each to Kansas consumers who bought unneeded one-year extended warranties on VCRs already covered by manufacturers' warranties.

Several years before that, Montgomery Ward, without admitting guilt, agreed to soften its sales pitch in order to settle federal false claims charges. The Federal Trade Commission in 1985 accused the department store chain of overstating the need for service on washing machines, lawn mowers and air conditioners.

There is a good reason why companies sell extended warranties so fervently. Because consumers use them infrequently, extended warranties provide a bonanza to retailers. For many struggling mom-and-pop appliance stores, EWC warranties were astonishingly lucrative. According to bankruptcy trustee Morrissey, EWC sold its warranties to retailers for \$12 to \$15 apiece. Electronics merchants in turn resold the warranties to consumers for between \$50 and \$100 each.

LA Times  
12/28/91

document received by the CA 4th District Court of Appeal Division 2.

000039

0076

MJN/768

## Warranty Tips

**B**efore buying an extended warranty, look for the following things in mind:

- Need.** Though most manufacturers and retailers closely guard repair histories, Consumers Union says most electronic devices and appliances are fairly reliable. The publisher of *Consumer Reports* says an extended warranty should be considered only if the technology is new and untested.
- Price.** Consumers Union says that extended warranties generally cost between 10% and 15% of the item's purchase price. If a warranty costs more, it is overpriced, the group says.
- The Seller.** Know where you are buying the warranty from and whether an insured reserve account is maintained for repairs.
- The Alternative.** Consumers Union says it is often cheaper for consumers who are worried about big repair bills to maintain their own repair fund in an interest-bearing account. If repairs are needed, the money is there. If not, the money is yours.

In the world of electronics retailing, EWC-like profits are not unusual. Two years ago, the Financial Accounting Standards Board, an obscure body that makes accounting rules, found that electronics chains that sold warranties for \$300 spent no more than \$50 and possibly as little as \$12 for repairs.

Many retailers rely on warranties to make up for razor-thin profits on electronic equipment. Take the case of Leo's Stereo. Facing a cash crunch two years ago, Leo's started handing out bonuses for extended warranty sales. Revenue from warranties exploded fivefold, helping to pro-

long the life of the troubled electronics chain. According to Leo's annual report, it took in \$10.5 million from warranties and repairs in fiscal 1990, about the same as it received from sales of such popular items as VCRs, camcorders and television sets.

John Howarth, former manager of Leo's now-shuttered Culver City store, felt guilty pushing service contracts so hard. "Most electronic goods don't break down," he said. "It was like taking free money. You sell a piece of paper and take money for it."

Among those persuaded to buy a Leo's warranty was Robert J. Brucato, a California Institute of Tech-

nology professor who paid \$19.99 for a two-year warranty for a car stereo. When Leo's shut down, his car stereo was being fixed at a Whittier shop that refused to bill Leo's for repairs. Caught in the middle, Brucato had to pay the \$118 repair bill to get his car stereo back.

Former Leo's executives declined to discuss the chain's warranties. Leo's bankruptcy attorney, Paul S. Aronson of the firm Milbank, Tweed, Hadley & McCloy, said that a warranty is essentially backed by the "word of the company. . . . In bankruptcy, as with any other contract, there is no mechanism to enforce that promise."

**T**hree years ago, then-Gov. George Deukmejian vetoed legislation sponsored by state Sen. Herschel Rosenthal (D-Los Angeles) that would have required warranty companies to maintain reserves for repairs or obtain insurance to cover repair costs in case of a bankruptcy. Now, Florida is the only state that requires extended warranty sellers to maintain reserves or insurance.

Although the Consumer Affairs

Department is considering a proposal to revive that legislation, retailers argue that it would be costly and in the end may do no good. When Florida regulators took steps against EWC Inc. last spring for maintaining inadequate reserves, the company left the state and emptied the escrow account that was set up to protect Florida warranty holders. The insurance policy taken to protect the escrow account, issued by an insurance company controlled by EWC's Trice, turned out to be as worthless as the EWC warranties.

Macy's Stubbs estimated that such legislation would raise the price of extended warranties by \$1 to \$2 each, making them more expensive for people who want them—such as William Fessler.

A Canyon County insurance salesman, Fessler has caution in his blood. He also has a houseful of extended warranties: There's one for his garage door opener, another for his washer, and warranties for his clothes dryer and his Ford Bronco. Though the EWC warranty for his stove top is now worthless, Fessler's trust in warranties is unshaken. "I still believe in them," he said. "I'd buy one again."

000040

0076

MJN/769

Document received by the CA 4th District Court of Appeal Division 2.

JAN 17 '92 14:08

P.1

# WHO NEEDS AN EXTENDED WARRANTY?

**W**e've warned consumers for years that extended warranties on home appliances and electronic goods are not worth buying. Extended warranties are really insurance policies. The purpose of insurance is to protect individuals from financial disaster by spreading risk across a large group of policyholders. That's the reason people buy life insurance, homeowners insurance, and car insurance. It's also the reason people don't need an extended warranty. It makes little economic sense to insure against small risks that individuals can, if need be, cover out of their own pocket. It makes even less sense to buy insurance priced so that most of the premium goes into profits, and very little into payments to the insured consumer.

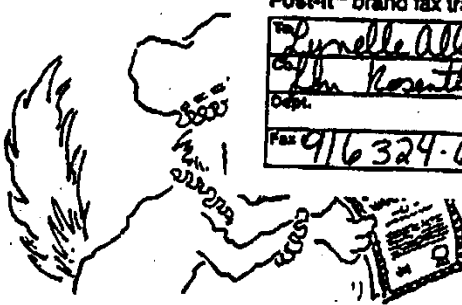
## The awful truth

Retailers have been tight-lipped about their profits on warranty sales. But recently they've divulged this once-secret information, as part of an industry-wide examination of accounting procedures. It sheds new—and quite unflattering—light on the extended-warranty business.

We obtained an "issues paper" prepared by several large consumer-electronics chains for the Financial Accounting Standards Board (FASB), a group that establishes generally accepted accounting procedures. That document and material we received from other sources show that warranty sales are far more lucrative for many retailers than anything else in the store.

According to the retailers themselves, only 12 to 20 percent of people who buy a warranty will ever use it. And many warranty-holders who do call for service don't need repair work, but simply help of an "educational" nature. In other words, they didn't understand the instructions.

Extended warranties go unused for other reasons, as well. Robert M. Wilson, a vice president of the Roberds chain (with stores in Dayton, Atlanta, and Tampa) noted in a letter to the FASB that: "Many of the contracts are never utilized by



Post-It™ brand fax transmittal memo 7671

# of pages = 2

To: Lynelle Allen	From: Christine
cc: Ron Rosenthal Jr.	Co: C.U.
Dept.	Phone: 415 431-6747
Fax: 916 324-6645	Fax #

the customer as a result of moves out of the area, family split-ups and the customer simply forgetting he has the warranty."

Since warranties usually don't require the seller to provide any regular service or maintenance, and since actual repairs are so infrequent, the profit margin is enormous. Retailers estimate that for every dollar they take in from selling extended warranties, they will have to spend between 4 and 15 cents on service. (By contrast, good health-insurance providers pay out about 65 cents for every dollar taken in premiums.)

HIFI Buys, a 13-store chain in Atlanta, used to contract with an independent warranty company that paid a commission of 70 percent, the company's president told the FASB. Now, he says, HIFI Buys issues its own warranties "to earn additional profits." So do hundreds of other stores, many of which don't even have service departments. They simply call an independent servicer to do the work on the rare occasions when that becomes necessary.

The FASB data show that some of the largest electronic and appliance retailers would be losing money if it weren't for the profits they make from selling warranties. And naturally, salespeople push them as if their lives depended on it. An average of 40 percent of the customers who buy at the large chains purchase an extended warranty, with sales in some product categories as high as 75 percent.

In 1989, Circuit City (based in

Richmond, Va.), one of the 10 largest appliance and electronics retailers in the U.S., derived more than half of its profit from the sale of warranties, according to an investment analyst at Salomon Brothers. Two other large chains, Highland Superstores (based in Taylor, Mich.) and Best Buy (Bloomington, Minn.), would have posted substantial losses had it not been for warranty sales, the same investment analyst reported.

The push for warranty sales has intensified as the always-competitive retailing industry has changed. Today, consumers tend to shop for electronics and appliances by price. Customer loyalty is largely a thing of the past. (Interestingly, the FASB report also notes that the large chains try to thwart comparison shoppers by using their own exclusive model numbers on brand-name products.)

Faced with a small profit, if any, on the sale of the product, the stores look to the warranty to make up the difference. "The [warranties] are factored into the sales price of the product and help offset a low product gross margin," one FASB document notes. The more warranties sold, the lower the sales price can be, which is what attracts customers in the first place.

## Here's the pitch

Retailers rarely advertise their extended warranties. They count on the consumer buying a warranty as an afterthought, and the price is often whatever the salesperson

Consumers don't. But industry data we've obtained reveal that warranties are often the most profitable item in the store for retailers.

Illustrations by Art Glazer

CONSUMER REPORTS JANUARY 1991

21

000041

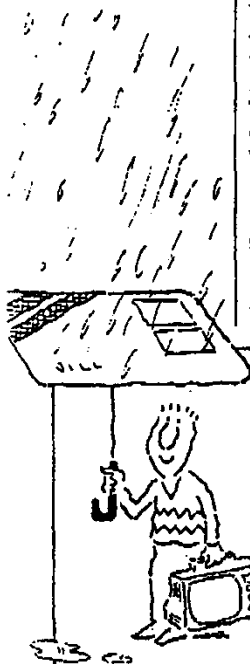
0076

MJN/770

Document received by the CA 4th District Court of Appeal Division 2.



**Splash, splash**  
One theory among electronics buffs holds that failures in electronic products follow a curve shaped like a bathtub. A large percentage of failures occur early (when the manufacturer's warranty is still in effect). Few occur in the middle. Then, more occur at the end (by which time an extended warranty will usually have expired).



thinks that particular customer might fall for. One salesman at an appliance store in New York City told CU, "We know that our cost on a warranty [purchased from an independent company] is usually \$50 or less. If we can get \$150 from the customer, that's about average. And if we get more, that's gravy." The salesman told us his commission on warranties was 20 percent. Salespeople have learned that the most effective pitches for warranties play on consumers' fears. "These things are very complicated, and they break down all the time," we heard one salesman tell a customer buying a VCR. "Don't you want peace of mind for the next five years?"

Another salesman claimed it's "practically impossible" to find anybody who can fix projection television sets. A single repair job on a TV set, claimed a third salesman, could easily recoup the price of the warranty contract.

#### **It gets worse**

Some consumers who succumb to the sales pitch and buy a warranty find it useless if they ever do need service. Crazy Eddie, a chain that once dominated the home-electronics business in the New York metropolitan area, aggressively sold extended warranties—right up to the day it went bankrupt in June 1989. In California during the past year, University Stereo, FedMart Stores, and Pacific Stereo all closed their doors, leaving consumers with worthless contracts.

At least 19 independent companies supply warranties to stores around the country. In most cases, neither they nor the stores that issue their own warranties are subject to state insurance regulations. That means they don't have to put money aside to cover their warranty obligations should they go out of business.

Both California and New York are considering legislation that would require retailers to disclose whether a warranty contract is backed by an insurance company in case the retailer goes broke. California would also require contract sellers to obtain a state insurance license.

A bill to regulate extended warranties on the national level died in Congressional committee last October. That bill would have prohibited retailers from making more than a 100 percent profit on a warranty contract, and would have forced

them to set aside financial reserves to cover the expected repairs.

Even if the retailer stays in business, buying an extended warranty is a risky proposition. It's like making two bets: that the appliance will break down after the manufacturer's warranty expires (and before the extended warranty does) and that the cost of the repairs will exceed the cost of the contract. In our view, that's a long shot.

Falling prices on some electronic items and the relentless pace of technological improvement weighs against many household goods ever seeing a repair shop. The first bulky VCRs were marketed in the 1970s at a price of over \$1000. VCRs with many of the latest features can now be bought for less than \$300. When faced with a \$150 repair bill on a three- or four-year-old VCR, many consumers simply retire the old unit and buy a new one. Appliances like washing machines, however, may be used for a decade or more. But by the time they need repair, the extended warranty will probably have expired, too.

#### **Rely on reliability**

Buying products with a solid record of reliability is the best way to avoid breakdowns. Every year, CONSUMER REPORTS surveys hundreds of thousands of readers about the repair records of goods they own. Clear differences often emerge.

Consider large microwave ovens. Over a five-year period, about 6 percent of those made by Panasonic, Sanyo, Sharp, or Quasar required a visit to the repair shop. But 20 percent of the ovens made by Whirlpool, the manufacturer with the worst repair record, needed service. Even then, a fair percentage of those repairs fell within the manufacturer's warranty. (Note, too, that some manufacturers will repair merchandise past the warranty period free of charge for consumers who complain vigorously, although manufacturers don't advertise that fact.)

Of course, our repair data show how well appliances have performed in the past, not how well new models will hold up. But we think you'll improve your chances of getting reliable merchandise if you stick with the brands that have historically required fewer repairs.

Our bottom-line advice: Instead of buying an extended warranty, take the money it would cost you and set it aside as a repair fund, just in case.

## **CREDIT-CARD WARRANTIES**

### **THE PRICE IS RIGHT**

Still more evidence that extended warranties cost their issuers very little: Credit-card companies now toss in a free one when you buy merchandise with their card.

On items purchased with American Express cards, some standard Visa and MasterCard (and all their "gold" cards), the credit-card company will double the manufacturer's warranty for a maximum period of up to one year. With a few years of experience now behind them, the card companies have even dropped the item-registration requirements that once were part of their warranty programs. Now, you need only present the original store receipt and a copy of the manufacturer's warranty at the time you make a claim.

Despite the relaxed rules, there's been no stampede to the claim window. "Claims are incredibly low," says Geri Detweiler, a spokesperson for Bankcardholders of Amer-

ica, a consumer group. "We've gotten no complaints about them, probably because so few people use them." Visa International told CU that its gold-card users made about 33,000 warranty claims in 1989—based on well over 100 million purchases. That puts the rate of claims at just a minuscule fraction of 1 percent.

In addition to their warranties, some MasterCard and Visa cards, and all American Express cards, throw in 90 days' worth of purchase insurance, which will pay to replace or repair merchandise that is lost, stolen, or damaged. The insurance generally won't cover jewelry, gold, furs, tickets, or items stolen from a car. And coverage is secondary to any other coverage you may already have. (In other words, it pays off only if your other insurance doesn't.)

To compete with credit-card programs, major banks such as Citicorp and Chase Manhattan have also gotten into the act. They now offer warranty extensions and purchase insurance on goods bought with their checks or debit cards.

000042

0076

MJN/771

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0076

**MJN/772**

document received by the CA 4th District Court of Appeal Division 2.

ASSEMBLY CONSUMER PROTECTION, GOVERNMENTAL  
EFFICIENCY AND ECONOMIC DEVELOPMENT COMMITTEE  
REPUBLICAN ANALYSIS

SB 798 (Rosenthal) -- ELECTRONIC AND APPLIANCE REPAIR: SERVICE CONTRACTORS.

Version: 7/01/93

Lead Republican: Kathleen Honeycutt

Analyzed: 07/06/93

Vote: Majority

Recommendation: Support

**SUMMARY:** Requires sellers of service contracts to be registered; sets out requirements sellers must meet in order to be registered; also provides for an enforcement mechanism; sunsets 1/01/98.

**FISCAL EFFECT:** The Bureau of Electronic and Appliance Repair (BEAR) estimates that this measure would require an augmentation of \$601,000 and 9.9 PYs in FY 1994/95 and \$499,000 and 9.9 PYs in FY 1995/96 and ongoing based on projected workload related to the inclusion of service contractors to its existing program; there are additional enforcement costs which are indeterminate at this time; this program is to be funded by the industry through registration fees.

**POTENTIAL EFFECTS:** -this measure will be industry-funded through registration fees  
-provides protection to consumers who purchase service contracts from businesses that fail  
-this is a good consumer protection measure

**SUPPORT:** Department of Consumer Affairs, State and Consumer Services Agency

**OPPOSITION:** None on file

**GOVERNOR'S POSITION:** Unknown

**COMMENTS:**

- o **Background:** The sale of service contracts for appliances and consumer electronics has become a multi-million business in the state of California; although the Song-Beverly Consumer Warranty Act provides for proper disclosure procedures, only consumers who purchase contracts from BEAR registrants have recourse for addressing complaints arising from violations of the Act --which covers only about 50 percent of service contract sales. Several major sellers of service contracts have gone out of business within the past year, leaving hundreds of thousands of California consumers holding worthless contracts.
- o Proponents argue that this measure is needed to ensure that a consumer has some recourse if the service contractor fails to comply with the terms of the service contract; it would require that service contractors are insured for all obligations and liabilities they incur.
- o Proponents argue that currently, nothing requires service contractors to guarantee the performance of the contract for the life of the contract.
- o Proponents argue that currently, nothing requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts,
- o Proponents argue that this measure would ensure that the consumer is informed, has recourse if the service contractor fails to comply with the terms of the contract.

000043

0076

MJN/773

document received by the CA 4th District Court of Appeal Division 2.



- o Proponents argue that this measure is the product of more than a year of negotiations involving the Department of Consumer Affairs, service contractors, retailers, and manufacturers.

Senate Republican Floor vote -- 6/10/93

(22-5) Ayes: Beverly, Craven, Maddy, Morgan

Noes: Hurtt, Kelley, Leonard, Rogers, Wyman

Ab/NV: All other Republicans

Assembly Republican Committee vote

CP, GE & ED -- 7/07/93

(>) Ayes: >

Noes: >

Abs.: >

N.V.: >

Consultant: Bill Cardoza

000044

00768

MJN/774

Document received by the CA 4th District Court of Appeal Division 2.

Date of Hearing: July 7, 1993

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,  
GOVERNMENT EFFICIENCY AND ECONOMIC DEVELOPMENT  
Jackie Speier, Chair

SB 798 (Rosenthal) - As Amended: July 1, 1993

PRIOR ACTION:

SENATE BUSINESS AND PROFESSIONS . . . . . 10-0  
SENATE APPROPRIATIONS . . . . . 28.8  
SENATE FLOOR . . . . . 22-5

SUBJECT: Electronic and appliance repair: service contractors

DIGEST

Existing law provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Existing law creates within the DCA the Bureau of Electronic and Appliance Repair (BEAR) which is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service dealer businesses.

Existing law, provisions of the Song-Beverly Consumer Warranty Act, define a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance. (Civil Code Section 1791 et seq.) The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds, and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.

Existing law provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill would:

- 1) Provide for the regulation of service contractors by BEAR of the DCA. The bill would provide for the payment of registration fees by service contractors to the BEAR for deposit into the Electronic and Appliance Repair Fund (special fund).
- 2) Provide that BEAR may refuse to validate, or may temporarily or permanently invalidate the registration of a service contractor for acts of fraud or

- continued -

000045

00768

MJN/775

Document received by the CA 4th District Court of Appeal Division 2.

dishonest dealing, conviction of a crime, and assisting or abetting in the violation of the act.

- 3) Provide that BEAR may issue a citation for various violations of the act and for false advertising and false promises.
- 4) Prohibit service contract administrators from selling service contracts unless a service contract reimbursement insurance policy is obtained.
- 5) Prohibit a service contract seller from issuing, selling, or offering for sale a service contract unless he or she: a) files a Form 10-K as required by the Securities and Exchange Commission that shows a net worth equal to at least the value of deferred revenues from service contracts in force; b) obtains a service contract reimbursement insurance policy; c) sells contracts which are administered by a service contract administrator who has a service contract reimbursement insurance policy covering the seller's service contracts; or d) maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force. A service contract seller would be required to submit with the application for registration, evidence of meeting these requirements.
- 6) Provide that a service contractor who does not operate a place of business in this state, but who sells or issues service contracts in this state is subject to licensure and shall pay the required license fees as if he or she had a place of business in this state.
- 7) Set forth grounds for various citations and administrative fees.
- 8) Define the following:

"Service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a set or appliance (as defined).

"Service contract administrator" or "administrator" as a person other than a service contract seller, or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers: a) providing service contract sellers with service contract forms; b) participating in the adjustment of claims arising from service contracts; c) arranging on behalf of service contract sellers the insurance required by this bill. A service contract administrator shall not be an obligor on a service contract.

"Service contract seller" as a person who sells or offers to sell its own service contract to a service contract holder;

- continued -

000046

00776

MJN/776

Document received by the CA 4th District Court of Appeal Division 2.

"Service contract holder" as the person who purchases a service contract from a service contract seller;

"Service contractor" as either a service contract administrator or service contract seller;

"Service contract reimbursement insurance policy" as a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to the service contract holder. Requires the policy to either cover all service contracts sold or specifically cover contracts sold to California residents.

- 9) Make related changes to the Song-Beverly Consumer Warranty Act relating to the regulation of service contractors.
- 10) Provide that the above shall only remain in effect until January 1, 1998 or until a later enacted statute deletes or extends that date.

#### FISCAL EFFECT

Unknown. The fees collected are expected to pay the cost of administration and enforcement of these provisions.

#### COMMENTS

Service contracts are typically provided for stereo equipment, video equipment, kitchen appliances, and other electronic products. They are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

The DCA states that currently, only 50 percent of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act. They further state that no state or federal law requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

DCA supports SB 798 to ensure that a consumer is informed, and has recourse if the service contractor fails to comply with the terms of the service for all obligations and liabilities they incur.

The San Francisco Chronicle (May 17, 1993) states that Californians spend approximately \$500 million annually on these types of service warranties.

- continued -

000047

0077

MJN/777

Document received by the CA 4th District Court of Appeal Division 2.

Nationwide, estimates show that more than \$5 billion is spent annually on these extended warranties and service contracts. Consumers Union states that the price of these extended warranties is generally 10% - 12% of the item's purchase price. Consumer's Union also states that it is often cheaper for consumers to maintain their own repair fund in an interest-bearing account.

Consumer Reports (January, 1991) states that retailers rarely advertise their extended warranties. They count on the consumer buying a warranty as an afterthought, and the price is often whatever the salesperson thinks that a particular customer might agree to pay. Additionally, items purchased by using a credit card are frequently covered under extended warranties provided by the credit card company.

The Attorney General recently investigated a Sacramento stereo shop who provided service contracts through a New York company. The Attorney General determined that since both companies had filed bankruptcy petitions, there appeared to be no point in filing an action. However, the Attorney General stated that this may give further reason for legislation regarding service contracts.

Prior Legislation:

- 1) AB 2285 (Moore) Chapter 1047, Statutes of 1985, authorized the sale of service contracts covering motor vehicles as long as the contracts disclose the terms, conditions and exclusions as well as the buyer's cancellation and refund rights. AB 2285 provided that service contracts be made available for inspection by the buyer before purchase and be delivered to the buyer within 60 days of purchase. The bill also mandated buyer refund rights as a result of a contract cancellation.
- 2) AB 4570 (Duplissee) Chapter 582, Statutes of 1988, extended the provisions of AB 2285 to include service contracts sold on a home appliance or home electronic product to make certain disclosures and to contain specific information.
- 3) AB 4468 (Elder) was vetoed in 1988 and would have required any 3rd-party administrators providing a service contract for consumer goods, other than motor vehicles, to obtain a service contract reimbursement policy of insurance coverage from a liability insurer admitted to do business in this state in an amount sufficient to indemnify the purchase of the service contract for any foreseeable losses under the service contract.
- 4) AB 2226 (Epple) was vetoed in 1990 and would have prohibited service contracts from duplicating express warranty coverages on home appliances and home electronic products.
- 5) SB 2086 (Rosenthal) failed passage in 1990 and would have required service contracts to contain information relating to the protection of the buyer from loss in the event of bankruptcy or insolvency of the service contract seller.

- continued -

000048

00778  
document received by the CA 4th District Court of Appeal Division 2.

MJN/778

- 6) AB 3374 (Epple) was vetoed in 1992 and would have provided for a comprehensive scheme for the regulation of motor vehicle service contract administrators subject to the jurisdiction of and regulation by the Insurance Commissioner. The Governor's veto message of AB 3374 stated:

"The department of insurance does not have the experience to carry out the increased enforcement burden contemplated by this bill. Moreover, I believe that enforcement of these contracts is best carried out by the Department of Consumer Affairs, which has expertise in the auto repair field which is not matched by the Department of Insurance..."

SUPPORT

Author (SPONSOR)  
Department of Consumer Affairs  
Department of Insurance  
California Retailers Association

OPPOSITION

None received to date.

Michael Miiller  
324-7440  
agef

SB 798  
Page 5

000049

0077

**MJN/779**

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00774

**MJN/780**

Document received by the CA 4th District Court of Appeal Division 2.



STATEMENT ON SB 798 RE SERVICE CONTRACTS  
ASSEMBLY CONSUMER PROTECTION COMMITTEE, 7/7/93

PROBLEMS IN THE AREA OF SERVICE CONTRACTS HAVE PROMPTED MANY BILLS OVER THE YEARS, BUT TO DATE THERE STILL ARE NOT ANY REQUIREMENTS THAT SERVICE CONTRACTORS GUARANTEE THE PERFORMANCE OF THE CONTRACTS, NOR DISCLOSE TO THE BUYER THE IDENTITY OF THE PARTY FINANCIALLY RESPONSIBLE FOR PERFORMANCE OF THE CONTRACT.

THIS BILL WOULD CHANGE THAT. IT REQUIRES SELLERS OF SERVICE CONTRACTS TO BE REGISTERED, AND SETS OUT REQUIREMENTS THEY MUST MEET IN ORDER TO BE REGISTERED. THESE REQUIREMENTS ARE INTENDED TO SCREEN OUT UNDERFUNDED AND FRAUDULENT COMPANIES, THEREBY PROVIDING GREATER ASSURANCE THAT IF YOU BUY A SERVICE CONTRACT, THE COMPANY WILL BE AROUND TO BACK IT UP SHOULD THE PRODUCT FAIL.

SB 798 IS THE PRODUCT OF MORE THAN A YEAR OF NEGOTIATIONS INVOLVING THE DEPARTMENT OF CONSUMER AFFAIRS, SERVICE CONTRACTORS, RETAILERS, AND MANUFACTURERS. CONSUMER GROUPS, WHICH HISTORICALLY HAVE ADVISED AGAINST PURCHASING SERVICE CONTRACTS, ARE NEUTRAL. THEIR VIEW IS THAT A CONSUMER IS BETTER OFF NOT EVEN BUYING A SERVICE CONTRACT. RATHER THAN FIGHT A LOSING BATTLE TO OUTLAW SERVICE CONTRACTS, I WOULD LIKE TO AT LEAST SEE THE CONSUMERS WHO BUY THEM PROTECTED. THAT IS WHY I'VE INTRODUCED THIS BILL.

I'VE TAKEN AMENDMENTS ON THE PENALTY PROVISIONS TO SATISFY RETAILERS' CONCERNS, WHO SUPPORT THE BILL. I'VE TAKEN OTHER AMENDMENTS SUGGESTED BY THE DEPT. OF INSURANCE, WHICH ALSO

000050

0077

MJN/781

Document received by the CA 4th District Court of Appeal Division 2.

SUPPORTS THE BILL. A 1/1/98 SUNSET WAS ADDED AT THE  
RECOMMENDATION OF THE DEPT. OF CONSUMER AFFAIRS. IF THE PROGRAM  
IS RUN WELL, THERE SHOULD BE SUFFICIENT SUPPORT TO EXTEND IT.

SB 798 RECEIVED STRONG BIPARTISAN SUPPORT IN THE SENATE AND I  
URGE YOUR AYE VOTE TODAY.

-----  
**In Case You're Asked --**

1) **WHAT'S THE COST TO THE STATE?** THE PROGRAM WOULD BE FUNDED BY  
REGISTRATION FEES, SO THERE'S NO COST TO THE STATE.

2) **THERE ARE BASICALLY 3 TESTS TO BE REGISTERED--A SERVICE  
CONTRACT SELLER WOULD HAVE TO MEET ONE OF THEM:**

a) Have a net worth that at least exceeds the revenues  
from service contracts.

b) Maintain an escrow account to pay claims (at least 25%  
of service contract revenues must go into this account).

c) Cover contracts with an insurance policy, or have  
contracts administered by a 3rd party who's insured.

3) **WHY DO CONSUMER GROUPS ADVISE AGAINST BUYING A SERVICE  
CONTRACT?** THEY'RE NOT A GOOD BARGAIN WHEN YOU COMPARE THE CLAIMS  
PAID OUT AGAINST THE MILLIONS OF DOLLARS TAKEN IN BY BUSINESSES  
WHO SELL THEM.

4) **WHY IS THE BILL SO LONG?** TWO REASONS: THIS BILL IS ADDED TO  
THE SAME SECTION OF LAW THAT REGULATES SERVICE DEALERS, SO A LOT  
OF IT IS EXISTING LAW IN THAT AREA. THE SUNSET ALSO MAKES IT  
LONGER BECAUSE THE BILL HAS TO RESTATE THE PROVISIONS THAT WOULD  
GO INTO EFFECT IF THE SERVICE CONTRACT PROVISIONS EXPIRE (WHICH  
IS ALL THE CURRENT LAW ON SERVICE DEALERS).

**\*\*Marty Keller, from the Bureau of Electronic and Appliance  
Repair, is present to answer questions about specifics of the  
bill.**

000051

0077

MJN/782

Document received by the CA 4th District Court of Appeal Division 2.

STATEMENT ON SB 798 RE SERVICE CONTRACTS  
ASSEMBLY WAYS AND MEANS COMMITTEE, 8/18/93

THIS BILL ADDRESSES SERIOUS PROBLEMS IN THE SALE OF SERVICE CONTRACTS ON ELECTRONIC EQUIPMENT AND HOME APPLIANCES. IT REQUIRES SERVICE CONTRACT SELLERS TO BE REGISTERED, AND SETS OUT REQUIREMENTS THEY MUST MEET IN ORDER TO BE REGISTERED. THESE REQUIREMENTS ARE INTENDED TO SCREEN OUT UNDERFUNDED AND FRAUDULENT COMPANIES, THEREBY PROVIDING GREATER ASSURANCE THAT IF YOU BUY A SERVICE CONTRACT, THE COMPANY WILL BE AROUND TO BACK IT UP SHOULD THE PRODUCT FAIL.

SB 798 RESULTED FROM MORE THAN A YEAR OF NEGOTIATIONS INVOLVING THE DEPT. OF CONSUMER AFFAIRS, RETAILERS, MANUFACTURERS, AND SERVICE CONTRACTORS. CONSUMER GROUPS, WHICH HISTORICALLY HAVE ADVISED AGAINST PURCHASING SERVICE CONTRACTS, ARE NEUTRAL.

I'VE TAKEN AMENDMENTS ON THE PENALTY PROVISIONS TO SATISFY RETAILERS' CONCERNS, WHO SUPPORT THE BILL. I'VE TAKEN OTHER AMENDMENTS SUGGESTED BY THE DEPT. OF INSURANCE; AND A 1/1/98 SUNSET, RECOMMENDED BY THE DEPT. OF CONSUMER AFFAIRS, WAS ADDED.

HOWEVER, AMENDMENTS SUGGESTED TO ME BY THE SERVICE CONTRACT INDUSTRY COUNCIL ARE NOT ACCEPTABLE TO ME, THE DEPT. OF CONSUMER AFFAIRS, OR THE DEPT. OF INSURANCE. THE AMENDMENTS WOULD REVERSE LONGSTANDING STATUTORY AND CASE LAW REGARDING THE REGULATION OF INSURERS, AN AREA WHICH MY BILL IS NOT DESIGNED TO ADDRESS.

SB 798 HAS RECEIVED STRONG BIPARTISAN SUPPORT AND I URGE YOUR AYE VOTE.

000052

00777

MJN/783

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0077

**MJN/784**

document received by the CA 4th District Court of Appeal Division 2.



400 R STREET, SACRAMENTO, CA 95814-6200

(916) 445-4465



August 10, 1993

TO: Members, Assembly Committee on Ways and Means

SUBJECT: SB 798 (Rosenthal) - SERVICE CONTRACTORS

HEARING DATE: August 18, 1993

FROM: JIM CONRAN, Director 

The Department of Consumer Affairs SUPPORTS SB 798 which would establish a service contract registration program within the Bureau of Electronic and Appliance Repair. This bill would prohibit a service contract seller from issuing, selling or offering for sale a service contract unless they (1) disclose certain financial information, (2) obtain an insurance policy on the service contract, (3) sell service contracts administered by an insured service contract administrator, or (4) maintain a funded escrow account, as specified. SB 798 also sets forth grounds for various citations and administrative fines to provide for enforcement.

Our position is based on the following:

- Currently, only 50 percent of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song Beverly Act.
- There is currently no requirement for service contractors to guarantee the performance of the contract for the life of the contract.
- Currently, nothing requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.
- SB 798 would ensure that a consumer is informed, and has recourse if the service contractor fails to comply with the terms of the service contract by requiring that service contractors be insured for all obligations and liabilities they incur.

For these reasons we SUPPORT, and ask for your AYE vote on, SB 798.

Should you have any questions about our position, please contact Traci Stevens, Deputy Director, at 327-5196.

000053

00779

MJN/785

Document received by the CA 4th District Court of Appeal Division 2.

ANALYST NAME: Dennis Weber  
PHONE NUMBER: 322-1203

**STATE AND CONSUMER SERVICES AGENCY**

**NO ANALYSIS REQUIRED**

Department	Author	Bill Number
<b>CONSUMER AFFAIRS</b>	<b>Rosenthal</b>	<b>SB 798</b>
Sponsor	Related Bills	Amended Date
<b>Calif. Retailers Assn.</b>	<b>None</b>	<b>7-1-93</b>
Subject		
<b>Electronic and Appliance Repair: Service Contractors</b>		

Existing law known as the Electronic and Appliance Repair Dealer Registration Law, requires a service dealer to register with the Bureau of Electronic and Appliance Repair (BEAR).

SB 798 would require registration of service contractors and specifies registration and renewal fees. The BEAR would be authorized to investigate complaints against service contractors. SB 798 sets forth grounds for citations and administrative fines. The bill would require service contracts to include statements identifying the person financially responsible to perform the services specified in the contract.

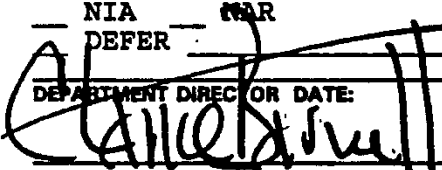
As amended July 1, 1993, SB 798 prohibits a service contract seller from selling or offering a service contract unless they (1) disclose certain financial information, (2) obtain an insurance policy on the service contract, (3) sell service contracts administered by an insured service contract administrator, or (4) maintain a funded escrow account, as specified.

As amended, SB 798 establishes an exemption to the California Public Records Act for the financial disclosures it requires.

The amendments to SB 798 include a sunset provision which would automatically end the program on January 1, 1998 unless extended by the Legislature and Governor.

The amendments expand service contractors' financial options to ensure that consumers have recourse should the service contractor fail to comply with the terms of the service contract. The amendments provide for a four-year trial period during which the effectiveness of the program can be assessed.

The amendments of July 1, 1993 do not change the department's previous position of SUPPORT on SB 798.

FEE /X/		FISCAL /X/		REPORT / /	
<b>DEPARTMENTS THAT MAY BE AFFECTED</b>					
<b>Bureau of Electronic and Appliance Repair</b>					
<b>STATE MANDATE / /</b>			<b>GOVERNOR'S APPOINTMENT / /</b>		
<b>DEPARTMENT DIRECTOR POSITION</b>			<b>AGENCY SECRETARY POSITION</b>		<b>GOVERNOR'S OFFICE USE</b>
<input checked="" type="checkbox"/> S	<input type="checkbox"/> O		<input checked="" type="checkbox"/> S	<input type="checkbox"/> O	<b>POSITION APPROVD.</b>
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA		<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<b>POSITION DISAPP.</b>
<input type="checkbox"/> N	<input type="checkbox"/> NP		<input type="checkbox"/> N	<input type="checkbox"/> NP	<b>POSITION NOTED</b>
<input type="checkbox"/> NIA	<input type="checkbox"/> NAR		<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	
<input type="checkbox"/> DEFER			<input type="checkbox"/> DEFER		
<b>DEPARTMENT DIRECTOR DATE:</b>			<b>Original Signed By</b>		<b>DATE: 4/1/1993</b>
			<b>AGENCY SECRETARY</b>		
			<b>Deputy Secretary</b>		
			<b>Legislation</b>		

000054

0078

**MJN/786**

Document received by the CA 4th District Court of Appeal Division 2.



SENATE THIRD READING

SB 798 (Rosenthal) - As Amended: August 16, 1993

SENATE VOTE: 22-5

ASSEMBLY ACTIONS:

COMMITTEE CONPRO VOTE 9-1 COMMITTEE W. & M. VOTE 19-0

Ayes: Areias, Bronshvag, Caldera,  
Eastin, Honeycutt, Knight,  
Martinez, Sher, Speier

Nays: Weggeland

DIGEST

Existing law:

- 1) Provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Within the DCA the Bureau of Electronic and Appliance Repair (BEAR) is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service-dealer businesses.
- 2) Defines, under provisions of the Song-Beverly Consumer Warranty Act, a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance (Civil Code Section 1791 et seq.). The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.
- 3) Provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill:

- 1) Creates a regulatory program for the registration of sellers of service contracts that would cover the repair of home electronics and appliances. This program would cover retailers, manufactures, and administrators who issue service contracts.
- 2) Requires registrants to pay fees which would fund the administration of the program.

- continued -

SB 798  
Page 1

000055

0078

MJN/787

Document received by the CA 4th District Court of Appeal Division 2.

FISCAL EFFECT

Unknown. According to Ways and Means Committee analysis, estimated registration fees collected from service contractors would pay for administrative and enforcement costs. Contains a crimes and infractions disclaimer, making local costs non-reimbursable.

COMMENTS

Service contracts are typically provided for stereo and video equipment, kitchen appliances, and other electronic products. They are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

The DCA states that currently, only 50% of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act. The department further states that no state or federal law requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

The San Francisco Chronicle (May 17, 1993) states that Californians spend approximately \$500 million annually on these types of service warranties. Nationwide, estimates show that more than \$5 billion is spent annually on these extended warranties and service contracts. Consumers Union states that the price of these extended warranties is generally 10% - 12% of the item's purchase price. Consumers Union also states that it is often cheaper for consumers to maintain their own repair fund in an interest-bearing account.

Consumer Reports (January, 1991) states that retailers rarely advertise their extended warranties. They count on the consumer buying a warranty as an afterthought, and the price is often whatever the salesperson thinks that a particular customer might agree to pay. Additionally, credit card companies frequently cover extended warranties on credit card purchases.

The Attorney General recently investigated a Sacramento stereo shop who provided service contracts through a New York company. The Attorney General determined that since both companies had filed bankruptcy petitions, there appeared to be no point in filing an action. However, the Attorney General stated that this may give further reason for legislation regarding service contracts.

Please refer to the policy committee analysis for a detailed discussion of the provisions of this bill.

FN 003580

Michael Miiller  
324-7440  
aconpro

SB 798  
Page 2

000056

0078

MJN/788

Document received by the CA 4th District Court of Appeal Division 2.



The only opponent, which wants a special exemption in Insurance Code.

They've been told to pursue a separate bill rather than use SB 798 as their vehicle.

August 17, 1993

Chairman John Vasconcellos  
Ways and Means Committee  
State Capitol, Room 6026  
Sacramento, CA 95814

Dear Chairman Vasconcellos:

The Service Contract Industry Council (S.C.I.C.), the national trade association for service contract administrators, (administrators) is opposed to SB 798 in its current form. S.C.I.C. is seeking an amendment to SB 798 that, if adopted, would allow us to endorse final passage of this legislation.

The current draft of SB 798 does not allow service contract administrators to act as the obligor on service contracts they provide to consumers, yet the bill allows retailers and manufacturers to act in this capacity. The "obligor" is the entity obligated under the service contract. This inequity in the current legislation gives an unfair advantage to certain segments of the service contract industry which ultimately will harm the consumer. An amendment resolving this inequity could be addressed by the Assembly which would not harm other industry segments and would increase the consumer protection aspects of this proposed law.

The S.C.I.C. proposes an amendment to allow administrators to serve as the obligor on service contracts they market to consumers, if the administrator purchased insurance for 100 percent of their liability on contracts from an A-rated insurer with a minimum of \$100 million in surplus. The current proposal allows a retailer or a manufacturer to serve as the obligor on the contract without purchasing insurance to back up claims. All contracts sold under this legislation by administrators must be backed by property and casualty insurance. A consumer purchasing a contract insured by a licensed property and casualty insurer is far better protected than a consumer purchasing a contract backed only by reserves held by a manufacturer or a retailer. This amendment helps strengthen this bill by encouraging administrators to utilize A-rated insurers with \$100 million in surplus.

A greater problem with SB 798 involves the issuance by the Internal Revenue Service of two revenue procedures regarding the tax treatment of service contracts. These new procedures force a retailer who acts as the obligor to account for service contracts one of two ways. First, the retailer may account for the income from a multi-year service contract in the first year, but must spread the deduction for purchasing the

204 -B South Monroe Street, P.O. Box 11068, Tallahassee, Florida 32302-3068 • (904) 681-1058

000057

0078

MJN/789

Document received by the CA 4th District Court of Appeal Division 2.

Chairman John Vasconcellos  
August 17, 1993  
Page Two

insurance over the life of the contract. Second, a retailer-obligor may spread both the income and insurance deductions over the life of the contract, but must pay additional taxes for this privilege. A summary of these revenue procedures is attached to this letter for your review.

The effect of this new I.R.S. procedure, coupled with the requirement in SB 798 that retailers be the obligor, is devastating to the consumer. Retailers will have the choice between selling insured contracts which will significantly increase their taxes and the cost of the service contract, or will choose to sell uninsured contracts backed only by reserves held by the retailer. In the highly competitive retail marketplace, higher product cost means less sales. For many retailers, the sale of service contracts is the difference between profitability and bankruptcy. Without our amendment, SB 798 will actually encourage retailers to sell uninsured programs in California.

Leo's Stereo, Inc., Pacific Stereo, Inc., and the Crazy Eddie retail chain are three examples of the better known uninsured retail service contract programs that left countless thousands of California consumers with unpaid claims and worthless service contracts when the retailer went bankrupt. Currently, there many other California retailers in bankruptcy. Florida, Oklahoma, and Connecticut all have laws that allow service contract companies to serve as obligors on contracts. The California Assembly should pass service contract regulatory legislation that encourages the sale of contracts backed by insurance, not discourage the practice.

The S.C.I.C. has worked diligently for months with the Bureau of Electronic and Appliance Repair and others to craft this legislation. We look forward to working with you and our local counsel, George R. Steffes, to enact meaningful legislation. Please feel free to contact me if you have any questions.

Sincerely,

Fred Schaufeld  
President

FS/kn

cc: Members, Assembly Ways and Means Committee

000058

0078

MJN/790

Document received by the CA 4th District Court of Appeal Division 2.

## NEW I.R.S. TAX TREATMENT FOR SERVICE CONTRACTS

In January 1992 the Internal Revenue Service issued a Technical Advice Memorandum #9218004 stating that an automobile dealer, rather than an automobile manufacturer, was the primary obligor on extended service contracts sold to automobile purchasers. As a result, the dealer must report the entire consumer's payment as income in the year received (the first year) but must now spread deductions for its payments for insurance to the manufacturer over the life of the contract even though the entire insurance payment is made in the first year. Prior to this ruling, the entire insurance deduction was taken in the first year of the contract.

For example, if a dealer sold a three-year extended service contract to a consumer for \$200 and paid the manufacturer \$150 for insurance to cover claims made under the contract, the dealer must report \$200 in income the first year and may only take a deduction of \$50 for the insurance expense in that first year. The dealer must pay taxes on net income of \$150 even though the dealer retains only \$50 in commission after payment for the insurance.

After issuing the Technical Advice Memorandum, the service began applying its ruling when auditing automobile dealers that sell extended service contracts on automobiles and has assessed tax liability, penalties and interest for past years. The National Automobile Dealers Association and several administrators and insurers of automobile extended service contracts began discussions with the I.R.S. and the Treasury Department regarding this tax treatment. These discussions led to two rulings by the I.R.S. to grant partial administrative relief from the harsh Technical Advisory Memorandum issued in January 1992. This relief was contained in Internal Revenue Service Advanced Revenue Procedures 92-97 and 92-98 relating to extended service warranties and were issued on November 13, 1992.

These two revenue procedures extend new I.R.S. policies regarding tax treatment of extended service contracts to retailers of durable consumer goods which includes all of your members that sell service contracts. Revenue Procedure 92-97 governs the timing of deductions attributable to insurance costs in relation to service contracts. It allows tax payers such as retailers, manufacturers or wholesalers of consumer goods to change to the accounting method prescribed originally for auto dealers in I.R.S. Technical Advice Memorandum 9218004 which was issued in January 1992. If a retailer elects to utilize this new tax treatment, it prevents the I.R.S. from initiating an audit of prior years.

Revenue Procedure 92-98 allows a retailer to partially escape the harsh tax treatment of Technical Advice Memorandum 9218004 by spreading both the insurance deductions over the life of the contract and the gross income over the life of the contract. However, the amount taken into income each year of the contract must be increased by an imputed income amount determined by applying a tax table found on the attached revenue procedure. The net effect of these procedures is to assure that retailers that choose to utilize insured service contract programs are now paying more taxes over the life of the contract and finding these products to be less profitable. Moreover, the problem is compounded as interest rates rise; as rates are now relatively low, the full effect of this policy has not been felt by the industry.

000059

0078

MJN/791

Document received by the CA 4th District Court of Appeal Division 2.

MEMORANDUM

Date: 25-Aug-1993 11:41am PDT  
From: Lynelle Jolley  
JOLLEY\_LY  
Dept: SC22  
Tel No:

TO: Claudia Peterson

( PETERSON\_CL )

Subject: sb 798 analysis

In anticipation of SB 798 (Rosenthal), re service contracts, returning to the Senate floor, it may simplify matters for you to know that the 8/16 amendments simply resolved conflicts with other legislation, including conforming language with some carjacking bills. The bill will probably make a quick return trip to Sen. B&P first.

OTHER AMENDMENTS IN ASSEMBLY:

1) Sunset the bill's provisions (1/1/98).

2) Revise penalty provisions for violations by a service contract seller so that minor, first-time infractions do not result in revocation of registration. This addressed retailers' concerns.

3) Set 3 requirements to become registered--seller must meet one of them: demonstrate a net worth greater than the sum of revenues from service contracts in force; sell contracts backed by insurer admitted to do business in Calif; or maintain reserve account equal to at least 25% of revenues from contracts in force.

4) Clarified definitions of "service contract seller," and "service contract administrator," and specifically prohibit administrators from being obligors on service contracts.

SUPPORT (a/o 8/24/93)

Dept. of Consumer Affairs  
Dept. of Insurance  
Calif. Retailers Assn.  
Natl. Assn. Retail Dealers of America  
Calif. State Electronics Assn.  
Circuit City

OPPOSITION (a/o 8/24/93)

Service Contract Industry Council

[The drafting of this bill is confusing, partly because of the sunset because it necessitated restating existing law

000060

0078

MJN/792

Document received by the CA 4th District Court of Appeal Division 2.



I N T E R O F F I C E   M E M O R A N D U M

Date: 27-Aug-1993 09:45am PDT  
From: Lynelle Jolley  
JOLLEY\_LY@A1@SENATE  
Dept: SC22  
Tel No:

TO: MICHAEL MIILLER

( MIILLER\_MI AT A1 AT ACOMM )

Subject: SB 798

Michael,

Lynelle thought it would be useful for you to see the attached memo because of its description of the latest amendments.

Thanks, Sylvia M.

000061

0078

MJN/793

Document received by the CA 4th District Court of Appeal Division 2.

INTEROFFICE MEMORANDUM

Date: 26-Aug-1993 08:54am PDT  
From: Lynelle Jolley  
JOLLEY\_LY@A1@SENATE  
Dept: SC22  
Tel No:

TO: Michael Gomez

( GOMEZ\_MI@A1@SENATE )

Subject: sb 798

We took your suggestion and will go ahead and amend our service contract bill on the Assembly floor. Hopefully they'll be back from Leg. Counsel before the Assy. adjourns today.

The amendments bascially clarify the distinction between "service contract seller" and "service contract administrator" in response to some legitimate questions raised by the Good Guys (the electronics chain).

Lynelle

000062

0078

MJN/794

Document received by the CA 4th District Court of Appeal Division 2.

I N T E R O F F I C E   M E M O R A N D U M

Date: 26-Aug-1993 08:50am PDT  
From: Lynelle Jolley  
JOLLEY\_LY@A1@SENATE  
Dept: SC22  
Tel No:

TO: Claudia Peterson

( PETERSON\_CL@A1@SENATE )

Subject: more amendments to sb 798

Claudia,

Since e-mailing you yesterday, we have decided to do some clarifying amendments to our service contract bill. The amendments may be taken up on the ASSEMBLY floor today if they're back in time from Leg. Counsel.

These amendments do not change the substance of the bill beyond what I explained in my e-mail to you yesterday. They only affect the timing of when they'll reach the SENATE floor.

Lynelle Jolley  
445-7928

000063

0078

**MJN/795**

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00796

**MJN/796**

document received by the CA 4th District Court of Appeal Division 2.

AMENDED IN ASSEMBLY AUGUST 30, 1993

AMENDED IN ASSEMBLY AUGUST 16, 1993

AMENDED IN ASSEMBLY JULY 1, 1993

AMENDED IN SENATE MAY 3, 1993

AMENDED IN SENATE APRIL 27, 1993

**SENATE BILL**

**No. 798**

**Introduced by Senator Rosenthal**

**March 4, 1993**

An act to amend Sections 9830, 9832, and 9847 of, to amend, repeal, and add Sections 9849, 9851, 9853, 9860, 9863, and 9873 of, to add and repeal Sections 146.5, 9830.5, 9832.5, 9847.5, and 9862.5 of, and to add and repeal Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of, the Business and Professions Code, to amend, repeal, and add Sections 1791 and 1794.4 of the Civil Code, and to amend Section 6254 of the Government Code, relating to electronic and appliance repair.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 798, as amended. Rosenthal. Electronic and appliance repair: service contractors.

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer, as defined, to register with the Bureau of Electronic and Appliance Repair, as specified.

This bill would require the registration of service contractors, as defined, and would prohibit a service contract seller, as defined, from issuing, selling, or offering for sale a service contract unless he or she (1) discloses certain financial information, (2) obtains a service contract reimbursement insurance policy, (3) sells service contracts which are

000064 80

administered by a service contract administrator, as defined, who has obtained service contract reimbursement insurance, or (4) maintains a specified funded escrow account. The bill would also prohibit a service contract administrator from administering service contracts unless he or she has obtained a service contract reimbursement insurance policy. Among other things, this bill would require the filing of the form of a service contract issued by a service contractor prior to its use and would authorize the Director of Consumer Affairs to invalidate the registration of a service contractor for specified reasons and to investigate complaints against a service contractor. The bill would require a service contractor to pay various registration and renewal fees, as specified.

Existing law requires a service dealer to pay a specified fee for each place of business operated in this state.

This bill would require a service dealer or a service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells ~~or issues~~, issues, or administers service contracts in this state, to hold a valid registration and to pay required registration fees.

Existing law permits the sale of a service contract to a buyer, except as specified, in addition to or in lieu of an express warranty if the contract fully discloses the terms, conditions, and exclusions of the contract and the contract contains specified information.

This bill would require the contract to include a statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

The bill would set forth grounds for various citations and administrative fines, as specified.

The bill would also add, as an exception to the disclosure provisions of the California Public Records Act, specified financial data contained in applications for registration or registration renewal as a service contractor or financial data regarding funded escrow accounts for service contracts.

Various provisions of the bill would be operative only until January 1, 1998, as specified.

Existing law provides that any violation of the Electronic

000065

94 100



and Appliance Repair Dealer Registration Law is a misdemeanor.

This bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 146.5 is added to the Business  
2 and Professions Code, to read:

3 146.5. (a) Notwithstanding any other provision of  
4 law, a violation of any code section listed in subdivision  
5 (c) is an infraction subject to the procedures described in  
6 Sections 19.6 and 19.7 of the Penal Code when either of  
7 the following occur:

8 (1) A complaint or a written notice to appear in court  
9 pursuant to Chapter 5c (commencing with Section 853.5)  
10 of Title 3 of Part 2 of the Penal Code is filed in court  
11 charging the offense as an infraction unless the  
12 defendant, at the time he or she is arraigned, after being  
13 advised of his or her rights, elects to have the case  
14 proceed as a misdemeanor.

15 (2) The court, with the consent of the defendant and  
16 the prosecution, determines that the offense is an  
17 infraction in which event the case shall proceed as if the  
18 defendant has been arraigned on an infraction complaint.

19 (b) Subdivision (a) does not apply to a violation of the  
20 code sections listed in subdivision (c) if the defendant has  
21 had his or her license, registration, or certificate  
22 previously revoked or suspended.

23 (c) The following sections require registration,  
24 licensure, certification, or other authorization in order to  
25 engage in certain businesses or professions regulated by

1 wholesale price to the retail seller of less than fifty dollars  
2 (\$50).

3 This section shall remain in effect only until January 1,  
4 1998, and as of that date is repealed, unless a later enacted  
5 statute, which is enacted before January 1, 1998, deletes  
6 or extends that date.

7 SEC. 12.5. Section 1791 is added to the Civil Code, to  
8 read:

9 1791. As used in this chapter:

10 (a) "Consumer goods" means any new product or part  
11 thereof that is used, bought, or leased for use primarily for  
12 personal, family, or household purposes, except for  
13 clothing and consumables. "Consumer goods" shall  
14 include new and used assistive devices sold at retail.

15 (b) "Buyer" or "retail buyer" means any individual  
16 who buys consumer goods from a person engaged in the  
17 business of manufacturing, distributing, or selling such  
18 goods at retail. As used in this subdivision, "person"  
19 means any individual, partnership, corporation,  
20 association, or other legal entity which engages in any  
21 such business.

22 (c) "Clothing" means any wearing apparel, worn for  
23 any purpose, including under and outer garments, shoes,  
24 and accessories composed primarily of woven material,  
25 natural or synthetic yarn, fiber, or leather or similar  
26 fabric.

27 (d) "Consumables" means any product which is  
28 intended for consumption by individuals, or use by  
29 individuals for purposes of personal care or in the  
30 performance of services ordinarily rendered within the  
31 household, and which usually is consumed or expended in  
32 the course of such consumption or use.

33 (e) "Distributor" means any individual, partnership,  
34 corporation, association, or other legal relationship which  
35 stands between the manufacturer and the retail seller in  
36 purchases, consignments, or contracts for sale of  
37 consumer goods.

38 (f) "Independent repair or service facility" or  
39 "independent service dealer" means any individual,  
40 partnership, corporation, association, or other legal

000067

94 610

1 entity, not an employee or subsidiary of a manufacturer  
2 or distributor, which engages in the business of servicing  
3 and repairing consumer goods.

4 (g) "Lease" means any contract for the lease or  
5 bailment for the use of consumer goods by an individual,  
6 for a term exceeding four months, primarily for personal,  
7 family, or household purposes, whether or not it is agreed  
8 that the lessee bears the risk of the consumer goods'  
9 depreciation.

10 (h) "Lessee" means an individual who leases  
11 consumer goods under a lease.

12 (i) "Lessor" means a person who regularly leases  
13 consumer goods under a lease.

14 (j) "Manufacturer" means any individual,  
15 partnership, corporation, association, or other legal  
16 relationship which manufactures, assembles, or produces  
17 consumer goods.

18 (k) "Place of business" means, for the purposes of any  
19 retail seller that sells consumer goods by catalog or mail  
20 order, the distribution point for such goods.

21 (l) "Retail seller," "seller," or "retailer" means any  
22 individual, partnership, corporation, association, or other  
23 legal relationship which engages in the business of selling  
24 or leasing consumer goods to retail buyers.

25 (m) "Return to the retail seller" means, for the  
26 purposes of any retail seller that sells consumer goods by  
27 catalog or mail order, the retail seller's place of business,  
28 as defined in subdivision (k).

29 (n) "Sale" means (1) the passing of title from the  
30 seller to the buyer for a price, or (2) a consignment for  
31 sale.

32 (o) "Service contract" means a contract in writing to  
33 perform, over a fixed period of time or for a specified  
34 duration, services relating to the maintenance or repair  
35 of a consumer product, except that this term does not  
36 include a policy of automobile insurance, as defined in  
37 Section 116 of the Insurance Code.

38 (p) "Assistive device" means any instrument,  
39 apparatus, or contrivance, including any component or  
40 part thereof or accessory thereto, which is used or

000068

94 630

1 incurred because this act creates a new crime or  
2 infraction, changes the definition of a crime or infraction,  
3 changes the penalty for a crime or infraction, or  
4 eliminates a crime or infraction. Notwithstanding Section  
5 17580 of the Government Code, unless otherwise  
6 specified in this act, the provisions of this act shall become  
7 operative on the same date that the act takes effect  
8 pursuant to the California Constitution.

O

000069

94 980

Document received by the CA 4th District Court of Appeal Division 2.

MJN/802

## SENATE THIRD READING

SB 798 (Rosenthal) - As Amended: August 30, 1993

SENATE VOTE: 22-5

## ASSEMBLY ACTIONS:

COMMITTEE \_\_\_\_\_ CONPRO \_\_\_\_\_ VOTE 9-1 COMMITTEE \_\_\_\_\_ W. & M. \_\_\_\_\_ VOTE 19-0

Ayes: Areias, Bronshvag, Caldera,  
Eastin, Honeycutt, Knight,  
Martinez, Sher, Speier

Nays: Weggeland

DIGESTExisting law:

- 1) Provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Within the DCA the Bureau of Electronic and Appliance Repair (BEAR) is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service-dealer businesses.
- 2) Defines, under provisions of the Song-Beverly Consumer Warranty Act, a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance (Civil Code Section 1791 et seq.). The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.
- 3) Provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill:

- 1) Creates a regulatory program for the registration of sellers of service contracts that would cover the repair of home electronics and appliances. This program would cover retailers, manufactures, and administrators who issue service contracts.

- continued -

000070

SB 798  
Page 1

0079

MJN/803

Document received by the CA 4th District Court of Appeal Division 2.



- 2) Requires registrants to pay fees which would fund the administration of the program.

#### FISCAL EFFECT

Unknown. According to Ways and Means Committee analysis, estimated registration fees collected from service contractors would pay for administrative and enforcement costs. Contains a crimes and infractions disclaimer, making local costs non-reimbursable.

#### COMMENTS

Service contracts are typically provided for stereo and video equipment, kitchen appliances, and other electronic products. They are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

The DCA states that currently, only 50% of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act. The department further states that no state or federal law requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

The San Francisco Chronicle (May 17, 1993) states that Californians spend approximately \$500 million annually on these types of service warranties. Nationwide, estimates show that more than \$5 billion is spent annually on these extended warranties and service contracts. Consumers Union states that the price of these extended warranties is generally 10% - 12% of the item's purchase price. Consumers Union also states that it is often cheaper for consumers to maintain their own repair fund in an interest-bearing account.

Consumer Reports (January, 1991) states that retailers rarely advertise their extended warranties. They count on the consumer buying a warranty as an afterthought, and the price is often whatever the salesperson thinks that a particular customer might agree to pay. Additionally, credit card companies frequently cover extended warranties on credit card purchases.

The Attorney General recently investigated a Sacramento stereo shop who provided service contracts through a New York company. The Attorney General determined that since both companies had filed bankruptcy petitions, there appeared to be no point in filing an action. However, the Attorney General stated that this may give further reason for legislation regarding service contracts.

Please refer to the policy committee analysis for a detailed discussion of the provisions of this bill.

FN 004219

Michael Miiller  
324-7440  
aconpro

SB 798  
Page 2

000071

00798

MJN/804

Document received by the CA 4th District Court of Appeal Division 2.



MEMORANDUM

Date: 31-Aug-1993 05:43pm PDT  
From: Lynelle Jolley  
JOLLEY\_LY  
Dept: SC22  
Tel No:

TO: Claudia Peterson

( PETERSON\_CL )

Subject: more on SB 798

I just noticed that question #6 on the Q&A attached to the SB 798 statement was pegged to the previous version of the bill. It describes "the latest amendments" as ~~intended to conform it to some carjacking bills.~~ Actually, the real latest amendments (8/30) clarify some definitions and apply previous amendments to parallel provisions in the Civil Code (previous amends dealt with the B&P code, but we should've made the same changes in the Civil Code).

Lynelle

000072

00798

MJN/805

Document received by the CA 4th District Court of Appeal Division 2.

that will be restored after the sunset. Those sections  
appear in the bill as new, even though they really aren't.]

000073

00806

**MJN/806**

Document received by the CA 4th District Court of Appeal Division 2.

QUESTIONS AND ANSWERS ON SB 798

**1) WHAT ABOUT THE COST?**

PROGRAM IS FUNDED BY REGISTRATION FEES. ANNUAL FEE IS \$60 PER LOCATION (WHERE CONTRACTS ARE SOLD). THERE'S A SCALE OF FEES FOR PLACES THAT ALSO ARE REGISTERED AS SERVICE DEALERS. THE INDUSTRY SUPPORTS THE FEES IN THIS BILL.

**2) WHAT ARE THE FINANCIAL TESTS TO BE REGISTERED?**

RETAILERS AND MANUFACTURERS WOULD HAVE TO MEET ONE OF THE FOLLOWING (AND VERIFY ANNUALLY UPON RENEWAL):

- a) Have a net worth that at least exceeds the revenues from service contracts (as reflected by their 10-k report filed with the SEC)
- b) Maintain an escrow account to pay claims (at least 25% of service contract revenues must go into this account).
- c) Cover contracts with an insurance policy, or have contracts administered by a 3rd party who's insured.

THIRD-PARTY ADMINISTRATORS WOULD HAVE TO HAVE INSURANCE.

**3) WHAT ARE THE DISCLOSURE REQUIREMENTS?**

THE CONTRACT MUST DISCLOSE TO THE CONSUMER THE NAME AND ADDRESS OF THE PARTY FINANCIALLY RESPONSIBLE FOR FULFILLING ITS TERMS.

**4) IS THERE ANY OPPOSITION?**

THE SERVICE CONTRACT INDUSTRY COUNCIL (S.C.I.C.), WHICH REPRESENTS A SMALL MINORITY OF SERVICE CONTRACT ADMINISTRATORS. THE BILL PROHIBITS ADMINISTRATORS FROM BEING THE OBLIGOR OF A SERVICE CONTRACT -- SCIC WANTS THAT PROHIBITION REMOVED. HOWEVER, IF THEY WERE TO BECOME AN OBLIGOR, THEY WOULD BE A DE FACTO INSURER UNDER LONGSTANDING STATUTORY AND CASE LAW. SB 798 IS NOT INTENDED TO REVERSE THIS FIELD OF LAW, AND THEIR AMENDMENTS HAVE BEEN REJECTED.

OTHER SERVICE CONTRACT ADMINISTRATORS WHO ARE NOT MEMBERS OF THE S.C.I.C. DISAGREE WITH S.C.I.C.'S POSITION.

**5) WHERE ARE CONSUMER GROUPS ON THIS BILL?**

NEUTRAL, SINCE THEY DON'T THINK SERVICE CONTRACTS ARE A GOOD BARGAIN FOR CONSUMERS. HOWEVER, THEY HAVE INDICATED THAT THE BILL MOVES IN THE RIGHT DIRECTION BY REGULATING THEIR SALES.

**6) WHAT DID THE LATEST AMENDMENTS DO?**

RESOLVED CONFLICT WITH OTHER LEGISLATION, INCLUDING CONFORMING LANGUAGE TO SOME CARJACKING BILLS.

**7) IS THERE A SUNSET?**

YES. JANUARY 1, 1998, WHICH CAN BE EXTENDED IF THE PROGRAM IS RUNNING WELL AND IS EFFECTIVELY PROTECTING CONSUMERS.

000074

0080

**MJN/807**

Document received by the CA 4th District Court of Appeal Division 2.

**M E M O R A N D U M**

**Date:** 31-Aug-1993 05:39pm PDT  
**From:** Lynelle Jolley  
JOLLEY\_LY  
**Dept:** SC22  
**Tel No:**

**TO:** Claudia Peterson

( PETERSON\_CL )

**Subject:** sb 798 statement

This is the statement used on the Assembly floor, which I will probably give Hersch to use for the Senate, along with the Q&A. I'm faxing the SCIC letter separately.

Please let me know if you have any questions.

Lynelle

000075

00808

**MJN/808**

Document received by the CA 4th District Court of Appeal Division 2.

STATEMENT ON SB 798 RE SERVICE CONTRACTS  
ASSEMBLY FLOOR

SB 798 ADDRESSES THE PROBLEM OF COMPANIES THAT SELL SERVICE CONTRACTS ON ELECTRONIC EQUIPMENT AND HOME APPLIANCES AND THEN GO OUT OF BUSINESS. THE CONSUMER IS LEFT HOLDING A WORTHLESS CONTRACT AND MAY ALSO BE STUCK WITH A REPAIR BILL IF THE PRODUCT ACTUALLY BREAKS DOWN.

THIS IS NOT AN UNCOMMON OCCURRENCE IN THE HIGHLY COMPETITIVE ELECTRONICS AND APPLIANCE MARKET, AND IT'S A CAUSE FOR CONCERN NOT ONLY TO CONSUMERS BUT ALSO TO REPUTABLE SELLERS OF SERVICE CONTRACTS. SB 798, WHICH RESULTED FROM MORE THAN A YEAR OF NEGOTIATIONS WITH THE INDUSTRY, TAKES THE APPROACH THAT FRAUDULENT AND UNDERFUNDED COMPANIES SHOULD NOT BE ALLOWED TO SELL SERVICE CONTRACTS.

SB 798 WOULD REQUIRE SELLERS AND ADMINISTRATORS OF SERVICE CONTRACTS TO BE REGISTERED, AND IT SETS OUT CERTAIN FINANCIAL CRITERIA THEY MUST MEET. THERE ALSO ARE DISCLOSURE REQUIREMENTS AND PENALTIES FOR VIOLATIONS, RANGING FROM REVOCATION OF REGISTRATION TO ADMINISTRATIVE FINES.

THE BILL'S SUPPORTERS INCLUDE THE DEPARTMENT OF CONSUMER AFFAIRS, DEPARTMENT OF INSURANCE, CALIFORNIA RETAILERS ASSOCIATION, NATIONAL ASSOCIATION OF RETAIL DEALERS OF AMERICA, CALIFORNIA STATE ELECTRONICS ASSOCIATION, AND CIRCUIT CITY.

SB 798 HAS RECEIVED STRONG BIPARTISAN SUPPORT AND I URGE AN AYE VOTE.

000076

0080

MJN/809

Document received by the CA 4th District Court of Appeal Division 2.

STATEMENT ON SB 798 RE SERVICE CONTRACTS  
ASSEMBLY FLOOR

SB 798 ADDRESSES THE PROBLEM OF COMPANIES THAT SELL SERVICE CONTRACTS ON ELECTRONIC EQUIPMENT AND HOME APPLIANCES AND THEN GO OUT OF BUSINESS. THE CONSUMER IS LEFT HOLDING A WORTHLESS CONTRACT AND MAY ALSO BE STUCK WITH A REPAIR BILL IF THE PRODUCT ACTUALLY BREAKS DOWN.

THIS IS NOT AN UNCOMMON OCCURRENCE IN THE HIGHLY COMPETITIVE ELECTRONICS AND APPLIANCE MARKET, AND IT'S A CAUSE FOR CONCERN NOT ONLY TO CONSUMERS BUT ALSO TO REPUTABLE SELLERS OF SERVICE CONTRACTS. SB 798, WHICH RESULTED FROM MORE THAN A YEAR OF NEGOTIATIONS WITH THE INDUSTRY, TAKES THE APPROACH THAT FRAUDULENT AND UNDERFUNDED COMPANIES SHOULD NOT BE ALLOWED TO SELL SERVICE CONTRACTS.

SB 798 WOULD REQUIRE SELLERS AND ADMINISTRATORS OF SERVICE CONTRACTS TO BE REGISTERED, AND IT SETS OUT CERTAIN FINANCIAL CRITERIA THEY MUST MEET. THERE ALSO ARE DISCLOSURE REQUIREMENTS AND PENALTIES FOR VIOLATIONS, RANGING FROM REVOCATION OF REGISTRATION TO ADMINISTRATIVE FINES.

THE BILL'S SUPPORTERS INCLUDE THE DEPARTMENT OF CONSUMER AFFAIRS, DEPARTMENT OF INSURANCE, CALIFORNIA RETAILERS ASSOCIATION, NATIONAL ASSOCIATION OF RETAIL DEALERS OF AMERICA, CALIFORNIA STATE ELECTRONICS ASSOCIATION, AND CIRCUIT CITY.

SB 798 HAS RECEIVED STRONG BIPARTISAN SUPPORT AND I URGE AN AYE VOTE.

000077

0080

MJN/810

Document received by the CA 4th District Court of Appeal Division 2.



STATEMENT ON SB 798 RE SERVICE CONTRACTS  
SENATE FLOOR

THIS BILL WOULD CREATE A REGISTRATION PROGRAM FOR SELLERS AND ADMINISTRATORS OF SERVICE CONTRACTS ON APPLIANCES AND ELECTRONIC PRODUCTS. IT'S THE PRODUCT OF OVER A YEAR'S WORTH OF NEGOTIATIONS WITH THE INDUSTRY AND THE DEPT. OF CONSUMER AFFAIRS IN WHICH THE PROBLEM OF FRAUDULENT AND UNDERFUNDED COMPANIES SELLING SERVICE CONTRACTS WAS ADDRESSED.

THE AMENDMENTS TAKEN IN THE ASSEMBLY SET SPECIFIC FINANCIAL STANDARDS TO BE REGISTERED AND ADDED A 4-YEAR SUNSET. IN ADDITION, THE RETAILERS' CONCERNS ABOUT THE PENALTY PROVISIONS WERE ADDRESSED SO THAT MINOR, FIRST-TIME INFRACTIONS WOULD NOT RESULT IN THE REVOCATION OF THEIR REGISTRATION.

THE BILL'S SUPPORTED BY THE DEPARTMENT OF CONSUMER AFFAIRS, DEPARTMENT OF INSURANCE, CALIFORNIA RETAILERS ASSOCIATION, NATIONAL ASSOCIATION OF RETAIL DEALERS OF AMERICA, CALIFORNIA STATE ELECTRONICS ASSOCIATION, AND CIRCUIT CITY.

IT HAS RECEIVED STRONG BIPARTISAN SUPPORT AND I URGE AN AYE VOTE.

000078

0080

MJN/811

Document received by the CA 4th District Court of Appeal Division 2.

**SB 798 (ROSENTHAL) BILL SUMMARY**

**BILL PURPOSE:**

To require sellers and administrators of service contracts for home appliances and electronic equipment to meet specified standards, which are intended to stop the growing problem of companies that sell service contracts but fail to carry out the contract's obligations to the consumer.

**REQUIREMENTS ON SELLERS:**

To sell service contracts in this state, a company must meet one of the following requirements: 1) Have a net worth that exceeds income from the sale of service contracts in force; 2) Hold at least 25% of service contract revenue in a separate account available to pay claims; 3) Insure service contracts with an insurer admitted to do business in California; or 4) Sell service contracts administered by a third-party that insures the contracts with a California-admitted insurer.

**REQUIREMENTS ON ADMINISTRATORS:**

Companies cannot administer service contracts on behalf of a seller unless those service contracts are backed by an insurer admitted to do business in California. Administrators are prohibited from being the obligor on a service contract.

**REGISTRATION PROGRAM:**

The Bureau of Electronic and Appliance Repair will implement a registration program for service contractors and investigate consumer complaints. It shall be unlawful to sell or administer service contracts in California without being registered. At the time of registration and annual renewal, fees must be paid and specified documentation that shows compliance with one of the requirements above must be submitted to the Bureau.

**OTHER PROVISIONS:**

- Service contracts must identify the party financially and legally responsible for fulfilling the contract's terms.
- The Bureau is granted expanded authority to enforce existing law governing the terms of service contracts and the consumer information they must contain.
- Service contract forms must be submitted to the Bureau prior to use.
- The bill's provisions sunset on January 1, 1998.

**PENALTIES:**

Registration will be revoked or administrative citations/fines imposed for violations of the requirements above or of any other legal requirements that apply to service contracts.

000079

0080

**MJN/812**

Document received by the CA 4th District Court of Appeal Division 2.

## UNFINISHED BUSINESS

## SENATE RULES COMMITTEE

Office of  
Senate Floor Analyses  
1020 N Street, Suite 524  
445-6614

Bill No. SB 798  
Author: Rosenthal (D)  
Amended: 8/30/93  
Vote Required: 21

## Committee Votes:

COMMITTEE: BUSINESS & PROF.		
BILL NO.:	SB 798	
DATE OF HEARING:	4-12-93	
SENATORS:	AYE	NO
Ayala	✓	
Craven	✓	
Greene	✓	
Hart	✓	
Kelley	✓	
Killea	✓	
Marks	✓	
McCorquodale	✓	
Rosenthal	✓	
Lewis (VC)	✓	
Boatwright (Ch)	✓	
TOTAL:	10	0

PLACED  
ON FILE  
PURSUANT  
TO SENATE  
RULE 28.8

Senate Floor Vote: p. 1634, 6/10/93

**Senate Bill 798**—An act to amend Sections 146, 9830, 9832, 9847, 9849, 9851, 9853, 9860, 9862, 9863, and 9873 of, to add Article 4.5 (commencing with Section 9855) to Chapter 20 of Division 3 of, the Business and Professions Code, and to amend Sections 1791 and 1794.4 of the Civil Code, relating to electronic and appliance repair.

Bill read third time and presented by Senator Rosenthal.

## Roll Call

The roll was called and the bill was passed by the following vote:

**AYES (22)**—Senators Ayala, Beverly, Boatwright, Craven, Deddeh, Dills, Greene, Hayden, Hughes, Johnston, Killea, Kopp, Lockyer, Maddy, Marks, Morgan, Petris, Roberti, Rosenthal, Thompson, Torres, and Watson.

**NOES (5)**—Senators Hurtt, Kelley, Leonard, Rogers, and Wyman.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 58-14, 8/31/93

**SUBJECT:** Electronic and appliance repair: service contractors

**SOURCE:** Author

**DIGEST:** This bill requires the Bureau of Electronic and Appliance Repair to create a new program to register and regulate sellers of service contracts. This bill also prohibits a service contract seller from issuing, selling or offering for sale a service contract unless he or she fulfills certain financial conditions and disclosures as specified. This bill provides for the payment of registration fees for service contractors and makes various provisions operative until January 1, 1998.

Assembly Amendments:

1. Prohibit a service contract seller from selling or offering a service contract unless they (a) disclose certain financial information, (b) obtain an insurance policy on the service contract, (c) sell service contracts administered by an insured service contract administrator, or (d) maintain a funded escrow account as specified.
2. Establish an exemption to the California Public Records Act for the financial disclosures it requires.
3. Make various provisions operative until January 1, 1998.
4. Revise penalty provisions for violations by a service contract seller.

000080

CONTINUED

0080

MJN/813

Document received by the CA 4th District Court of Appeal Division 2.

5. Clarify definitions of "service contract seller", and "service contract administrator", and specifically prohibit administrators from being obligors on service contracts.

ANALYSIS: Existing law provides for the licensing and regulation of various professions, vocations and providers of services to the public by the Department of Consumer Affairs (DCA). Existing law creates within the DCA the Bureau of Electronic and Appliance Repair (BEAR) which is responsible for the regulation of the electronic repair and appliance repair industries by providing for the registration (licensing) of 8,358 individual service dealers and service dealer businesses.

Existing provisions of the Song-Beverly Consumer Warranty Act, define a "service contract" as a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except a policy of automotive insurance. (Civil Code Section 1791 et seq.) The Act also requires motor vehicle, home appliance or home electronic product service contracts to meet certain standards for content, disclosure, refunds, and cancellation. Service contracts are applicable to items, costs and time periods not covered by express warranties.

Existing law provides that if a home appliance or home electronic contract is canceled within 30 days after receipt of the contract, buyers are entitled to full refunds or are entitled to pro-rata refunds for cancellations within the first 30 days after cancellation.

This bill provides for the regulation of service contractors by BEAR and for the payment of registration fees by service contractors.

The bill defines "service contract administrator", "service contract seller", "service contract holder", "service contractor", "service contract reimbursement insurance policy", and "service contract".

The bill prohibits a service contract seller from selling or offering a service contract unless they (1) disclose certain financial information, (2) obtain an insurance policy on the service contract, (3) sell service contracts administered by an insured service contract administrator, or (4) maintain a funded escrow account.

The bill provides that a service contractor who does not operate a place of business in this state but who sells, issues or administers service contracts in this state is subject to licensure and shall pay the required license fees as if he or she had a place of business in this state.

The bill sets forth grounds for various citations and administrative fines.

The bill requires the contract to disclose the name and address of the party financially responsible for fulfilling its terms.

The bill prohibits administrators from being obligors on service contracts.

The bill establishes an exemption to the California Public Records Act for the financial disclosures it requires.

The bill makes various provisions operative until January 1, 1998.

000081

CONTINUED  
0080

MJN/814

Document received by the CA 4th District Court of Appeal Division 2.

Comment

Service contracts are typically provided for stereo and video equipment, kitchen appliances, and other electronic products. They are generally purchased at the time of sale of the product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from subsequently bankrupt appliance and electronic retailers have no protection or recourse in identifying the party who is financially responsible for the performance of the purchased service contract.

The DCA states that currently, only 50% of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act. The department further states that no state or federal law requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

The San Francisco Chronicle (May 17, 1993) states that Californians spend approximately \$500 million annually on these types of service warranties. Nationwide, estimates show that more than \$5 billion is spent annually on these extended warranties and service contracts. Consumers Union states that the price of these extended warranties is generally 10% - 12% of the item's purchase price. Consumers Union also states that it is often cheaper for consumers to maintain their own repair fund in an interest-bearing account.

Consumer Reports (January, 1991) states that retailers rarely advertise their extended warranties. They count on the consumer buying a warranty as an afterthought, and the price is often whatever the salesperson thinks that a particular customer might agree to pay. Additionally, credit card companies frequently cover extended warranties on credit card purchases.

The Attorney General recently investigated a Sacramento stereo shop who provided service contracts through a New York company. The Attorney General determined that since both companies had filed bankruptcy petitions, there appeared to be no point in filing an action. However, the Attorney General stated that this may give further reason for legislation regarding service contracts.

Prior Legislation

AB 2285 (Moore - Chapter 1047, Statutes of 1985) authorized the sale of service contracts covering motor vehicles as long as the contracts disclose the terms, conditions and exclusions as well as the buyer's cancellation and refund rights. AB 2285 provided that service contracts be made available for inspection by the buyer before purchase and be delivered to the buyer within 60 days of purchase. The bill also mandated buyer refund rights as a result of a contract cancellation.

AB 4570 (Duplissee - Chapter 582, Statutes of 1988) extended the provisions of AB 2285 (Moore) to include service contracts sold on a home appliance or home electronic product to make certain disclosures and to contain specific information.

AB 4468 (Elder) was vetoed in 1988 and would have required any 3rd-party administrators providing a service contract for consumer goods, other than motor vehicles, to obtain a service contract reimbursement policy of insurance coverage from a liability insurer admitted to do business in this state in an amount sufficient to indemnify the purchase of the service contract for any foreseeable losses under the service contract.

000082

CONTINUED

00809

MJN/815

Document received by the 4th District Court of Appeal Division 2.

AB 2226 (Epple) was vetoed in 1990 and would have prohibited service contracts from duplicating express warranty coverages on home appliances and home electronic products.

SB 2086 (Rosenthal) failed passage in 1990 and would have required service contracts to contain information relating to the protection of the buyer from loss in the event of bankruptcy or insolvency of the service contract seller.

AB 3374 (Epple) was vetoed in 1992 and would have provided for a comprehensive scheme for the regulation of motor vehicle service contract administrators subject to the jurisdiction of and regulation by the Insurance Commissioner. The Governor's veto message of AB 3374 stated:

"The department of insurance does not have the experience to carry out the increased enforcement burden contemplated by this bill. Moreover, I believe that enforcement of these contracts is best carried out by the Department of Consumer Affairs, which has expertise in the auto repair field which is not matched by the Department of Insurance..."

**FISCAL EFFECT:** Appropriation: No Fiscal Committee: Yes Local: Yes

According to the Assembly Ways and Means Committee analysis, estimated registration fees collected from service contractors would pay for administrative and enforcement costs. Contains a crimes and infractions disclaimer, making local costs non-reimbursable.

**SUPPORT:** (Verified 8/31/93)

Department of Consumer Affairs  
Department of Insurance  
California Retailers Association  
National Association of Retail Dealers of America  
California State Electronics Association  
Circuit City

**OPPOSITION:** (Verified 8/31/93)

Service Contract Industry Council

**ARGUMENTS IN SUPPORT:** According to the Department of Consumer Affairs:

Currently, only 50 percent of consumers who purchase service contracts have recourse for addressing complaints arising from violations of the Song-Beverly Act.

Currently, nothing requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

SB 798 would ensure that a consumer is informed, and has recourse if the service contractor fails to comply with the terms of the service for all obligations and liabilities they incur.

**ARGUMENTS IN OPPOSITION:** THE Service Contract Industry Council opposes this bill unless amended to allow administrators to serve as the obligor on service contracts they market to consumers, if the administrator purchased insurance for 100 percent of their liability on contracts from an A-rated insurer with a minimum of \$100 million

000083

CONTINUED

00816

MJN/816

Document received by the CA 4th District Court of Appeal Division 2



in surplus. They state that a consumer purchasing a contract insured by a licensed property and casualty insurer is far better protected than a consumer purchasing a contract backed only by reserves held by a manufacturer or a retailer.

ASSEMBLY FLOOR VOTE:

MOTION: SB 798 ROSENTHAL THIRD READING BY SPEIER  
(AYES 58. NOES 14.) (PASS)

AYES

\*\*\*\*

Aguilar	Allen	Alpert	Archie-Hudson
Areias	Baca	Bates	Boland
Bornstein	Bowler	Bronshvag	Valerie Brown
Brulte	Burton	Bustamante	Caldera
Campbell	Cannella	Connolly	Conroy
Cortese	Costa	Epple	Escutia
Frazer	Barbara Friedman	Terry Friedman	Gotch
Hannigan	Harvey	Hauser	Honeycutt
Horcher	Isenberg	Karnette	Katz
Klehs	Knight	Lee	Margolin
Martinez	McDonald	Moore	Mountjoy
O'Connell	Peace	Polanco	Quackenbush
Rainey	Richter	Sher	Solis
Speier	Statham	Tucker	Umberg
Vasconcellos	Willie Brown		

NOES

\*\*\*\*

Andal	Bowen	Ferguson	Goldsmith
Haynes	Hoge	Jones	Knowles
Morrow	Nolan	Pringle	Seastrand
Weggeland	Woodruff		

CP:lm 9/1/93 Senate Floor Analyses

000084

0081

MJN/817

Document received by the CA 4th District Court of Appeal Division 2.

QUESTIONS AND ANSWERS ON SB 798

**1) WHAT ABOUT THE COST?**

PROGRAM IS FUNDED BY REGISTRATION FEES. ANNUAL FEE IS \$60 PER LOCATION (WHERE CONTRACTS ARE SOLD). THERE'S A SCALE OF FEES FOR PLACES THAT ALSO ARE REGISTERED AS SERVICE DEALERS. THE INDUSTRY SUPPORTS THE FEES IN THIS BILL.

**2) WHAT ARE THE FINANCIAL TESTS TO BE REGISTERED?**

RETAILERS AND MANUFACTURERS WOULD HAVE TO MEET ONE OF THE FOLLOWING (AND VERIFY ANNUALLY UPON RENEWAL):

- a) Have a net worth that at least exceeds the revenues from service contracts (as reflected by their 10-k report filed with the SEC)
- b) Maintain an escrow account to pay claims (at least 25% of service contract revenues must go into this account).
- c) Cover contracts with an insurance policy, or have contracts administered by a 3rd party who's insured.

THIRD-PARTY ADMINISTRATORS WOULD HAVE TO HAVE INSURANCE.

**3) WHAT ARE THE DISCLOSURE REQUIREMENTS?**

THE CONTRACT MUST DISCLOSE TO THE CONSUMER THE NAME AND ADDRESS OF THE PARTY FINANCIALLY RESPONSIBLE FOR FULFILLING ITS TERMS.

**4) IS THERE ANY OPPOSITION?**

THE SERVICE CONTRACT INDUSTRY COUNCIL (S.C.I.C.), WHICH REPRESENTS A SMALL MINORITY OF SERVICE CONTRACT ADMINISTRATORS. THE BILL PROHIBITS ADMINISTRATORS FROM BEING THE OBLIGOR OF A SERVICE CONTRACT -- SCIC WANTS THAT PROHIBITION REMOVED. HOWEVER, IF THEY WERE TO BECOME AN OBLIGOR, THEY WOULD BE A DE FACTO INSURER UNDER LONGSTANDING STATUTORY AND CASE LAW. SB 798 IS NOT INTENDED TO REVERSE THIS FIELD OF LAW, AND THEIR AMENDMENTS HAVE BEEN REJECTED.

OTHER SERVICE CONTRACT ADMINISTRATORS WHO ARE NOT MEMBERS OF THE S.C.I.C. DISAGREE WITH S.C.I.C.'S POSITION.

**5) WHERE ARE CONSUMER GROUPS ON THIS BILL?**

NEUTRAL, SINCE THEY DON'T THINK SERVICE CONTRACTS ARE A GOOD BARGAIN FOR CONSUMERS. HOWEVER, THEY HAVE INDICATED THAT THE BILL MOVES IN THE RIGHT DIRECTION BY REGULATING THEIR SALES.

**6) WHAT DID THE LATEST AMENDMENTS DO?**

RESOLVED CONFLICT WITH OTHER LEGISLATION, INCLUDING CONFORMING LANGUAGE TO SOME CARJACKING BILLS.

**7) IS THERE A SUNSET?**

YES. JANUARY 1, 1998, WHICH CAN BE EXTENDED IF THE PROGRAM IS RUNNING WELL AND IS EFFECTIVELY PROTECTING CONSUMERS.

000085

0081

**MJN/818**

Document received by the CA 4th District Court of Appeal Division 2.

**In Case You're Asked --**

The groups who've been working with us on this bill (retailers, manufacturers, service contract industry) have not yet sent us their support letters since they're waiting for it to be amended in the Assembly. If our agreement breaks down, you will not proceed with this bill.

Consumers Union has not taken a formal position, but have indicated to you that this bill will improve matters for those consumers who still choose to buy service contracts.

[The Dept. of Consumer Affairs has been the key party in the drafting of this bill, with input from the Dept. of Insurance.]

**More specifics of bill --**

THE PROGRAM WOULD BE FUNDED BY REGISTRATION FEES, SO THERE'S NO COST TO THE STATE. THE RETAILING AND SERVICE CONTRACT INDUSTRY IS FULLY BEHIND THIS EFFORT. THERE IS A GROWING AWARENESS AMONG CONSUMERS THAT EXTENDED WARRANTIES ARE NOT A VERY GOOD BARGAIN WHEN YOU COMPARE THE CLAIMS PAID OUT AGAINST THE MILLIONS OF DOLLARS TAKEN IN BY BUSINESSES WHO SELL THEM. THE INDUSTRY KNOWS THAT IF SERVICE CONTRACT SALES ARE TO CONTINUE GROWING, THEY NEED TO CLEAN UP THEIR ACT.

000086

0081

**MJN/819**

Document received by the CA 4th District Court of Appeal Division 2.

QUESTIONS AND ANSWERS ON SB 798

1) IS THERE ANY OPPOSITION?

THE SERVICE CONTRACT INDUSTRY COUNCIL (S.C.I.C.), WHICH REPRESENTS A SMALL MINORITY OF SERVICE CONTRACT ADMINISTRATORS. THE BILL PROHIBITS ADMINISTRATORS FROM BEING THE OBLIGOR OF A SERVICE CONTRACT -- SCIC WANTS THAT PROHIBITION REMOVED. HOWEVER, IF THEY WERE TO BECOME AN OBLIGOR, THEY WOULD BE A DE FACTO INSURER UNDER LONGSTANDING STATUTORY AND CASE LAW. SB 798 IS NOT INTENDED TO REVERSE THIS FIELD OF LAW, AND THEIR AMENDMENTS HAVE BEEN REJECTED.

INCIDENTALLY, OTHER SERVICE CONTRACT ADMINISTRATORS WHO ARE NOT MEMBERS OF THE S.C.I.C. DISAGREE WITH S.C.I.C.'S POSITION.

2) WHAT ABOUT THE COST?

PROGRAM IS FUNDED BY REGISTRATION FEES. ANNUAL FEE IS \$60 PER LOCATION (WHERE CONTRACTS ARE SOLD). THERE'S A SCALE OF FEES FOR PLACES THAT ALSO ARE REGISTERED AS SERVICE DEALERS. THE INDUSTRY SUPPORTS THE FEES IN THIS BILL.

3) WHAT ARE THE FINANCIAL TESTS TO BE REGISTERED?

RETAILERS AND MANUFACTURERS WOULD HAVE TO MEET ONE OF THE FOLLOWING (AND VERIFY ANNUALLY UPON RENEWAL):

- a) Have a net worth that at least exceeds the revenues from service contracts (as reflected by their 10-k report filed with the SEC)
- b) Maintain an escrow account to pay claims (at least 25% of service contract revenues must go into this account).
- c) Cover contracts with an insurance policy, or have contracts administered by a 3rd party who's insured.

THIRD-PARTY ADMINISTRATORS WOULD HAVE TO HAVE INSURANCE. (Any further questions--say you'll get back to them.)

4) WHERE ARE CONSUMER GROUPS ON THIS BILL?

NEUTRAL, SINCE THEY DON'T THINK SERVICE CONTRACTS ARE A GOOD BARGAIN FOR CONSUMERS. HOWEVER, THEY HAVE INDICATED THAT THE BILL MOVES IN THE RIGHT DIRECTION BY REGULATING THEIR SALES.

000087

0081

MJN/820

document received by the CA 4th District Court of Appeal Division 2.

SACRAMENTO OFFICE  
STATE CAPITOL ROOM 4070  
SACRAMENTO, CA 95814  
(916) 445-7928

DISTRICT OFFICE  
1950 SAWTELLE BLVD  
SUITE 210  
LOS ANGELES, CA 90025  
(310) 479-5588

LYNNETTE STEVENS  
CHIEF OF STAFF

DAN FLYNN  
LEGISLATIVE CONSULTANT



# California State Senate

**HERSCHEL ROSENTHAL**

22ND SENATORIAL DISTRICT

CHAIRMAN

SENATE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

## COMMITTEES:

ENERGY AND PUBLIC UTILITIES, CHAIRMAN  
HEALTH AND HUMAN SERVICES  
BUSINESS AND PROFESSIONS  
ELECTIONS AND REAPPORTIONMENT  
GOVERNMENTAL ORGANIZATION  
INDUSTRIAL RELATIONS  
INSURANCE, CLAIMS AND CORPORATIONS  
HOUSING AND URBAN AFFAIRS

## SUBCOMMITTEES:

BIOETHICS  
WOMEN IN THE WORKFORCE  
MENTAL HEALTH, DEVELOPMENTAL DISABILITIES  
AND GENETIC DISEASES

## MEMBER:

EARLY CHILDHOOD EDUCATION  
ADVISORY COUNCIL  
CALIFORNIA MOTION PICTURE  
COUNCIL ADVISORY COMMITTEE  
CALIFORNIA HERITAGE PRESERVATION  
COMMISSION

September 8, 1993

The Honorable Pete Wilson  
Governor  
State Capitol  
Sacramento, CA 95814

Dear Governor Wilson:

I am writing to urge you to sign SB 798, legislation that addresses a growing problem in the sale of service contracts on home appliances and electronic products.

Current law does not regulate the issuance of service contracts except through limited disclosure provisions of the Song-Beverly Consumer Warranty Act (Civil Code Sec. 1791 et seq). There are no requirements that service contractors guarantee the performance of the contracts nor disclose to consumers the identity of the party financially responsible to cover claims made against a contract in the event of bankruptcy.

There are many examples of retailers who sold service contracts on their products and subsequently filed for bankruptcy, leaving contract holders with worthless contracts and potentially high repair bills on the items that their contract was supposed to cover. Examples include Leo's Stereo, Federated, Pacific Stereo, University Stereo, Handy Andy's, Gemco, Zody's, and Macy's.

There are also examples of third-party administrators of service contracts going out of business. When one of the largest third-party service contractors in the nation went bankrupt three years ago (Oklahoma-based EWC), roughly 500,000 Californians were left with worthless contracts. State law currently provides no remedy for these consumers.

Hearings convened last year by the Bureau of Electronic and Appliance Repair solicited input from industry and consumers on ways to address this problem. SB 798 reflects the consensus among the participants that the state should take action to prevent fraudulent and underfunded companies from selling service contracts in the first place.

000088

0081

MJN/821

Document received by the CA 4th District Court of Appeal Division 2.

Governor Wilson  
September 8  
Page Two

SB 798 has received strong support from retailers, both large and small, because it assures that only reputable and financially solvent companies will be allowed to sell service contracts. This approach will help consumers by minimizing the risk involved in buying a service contract.

To register under SB 798, a company would have to meet at least one of the following financial requirements: demonstrate a net worth greater than the sum of revenues from service contracts in force; back contracts with insurance sold by an insurer admitted to do business in California; or maintain a reserve account equal to at least 25% of the revenues from contracts in force. Third-party administrators would be required to insure their service contracts.

The four-year sunset in SB 798 will help assure that the program is put in place swiftly and that resources are used efficiently. Fees paid by registrants will cover the cost of implementation and enforcement.

I believe SB 798 is a fair and balanced bill that deserves your support. I look forward to its speedy enactment.

Sincerely,



HERSCHEL ROSENTHAL  
Senator, 22nd District

HR:lj

000089

0081

MJN/822

Document received by the CA 4th District Court of Appeal Division 2.



Analyst Name: Dennis Weber

Phone Number: 322 03

## STATE AND CONSUMER SERVICES AGENCY

## ENROLLED BILL REPORT

DEPARTMENT  
Consumer AffairsAUTHOR  
RosenthalBILL NUMBER  
SB 798BILL SUMMARY

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer to register with the Bureau of Electronic and Appliance Repair (BEAR).

SB 798 prohibits service contract sellers from selling or offering a service contract unless they (1) disclose certain financial information, (2) obtain an insurance policy on the service contract, (3) sell service contracts administered by an insured service contract administrator, or (4) maintain a funded escrow account, as specified. This bill establishes an exemption to the California Public Records Act for the financial disclosures it requires. The bill requires service contracts to include statements identifying the persons who are financially responsible to perform the services specified in the contract.

SB 798 requires registration of service contractors and service dealers and specifies registration and renewal fees. This bill authorizes the BEAR to investigate complaints against service contractors. SB 798 sets forth grounds for citations and administrative fines.

Various provisions of this bill would remain in effect until January 1, 1998.

BACKGROUND

The sale of service contracts for appliances and consumer electronics has annually become an approximately \$500 million dollar business in the state of California. Although the Song-Beverly Consumer Warranty Act (Civil Code § 1791, et seq.) Specifies consumer disclosure procedures, only consumers who purchase contracts from BEAR registrants have recourse for addressing complaints arising from violations of that Act, according to BEAR regulation 2711 (c). This covers only about 50 percent of service contract sales.

There are no requirements that service contractors or dealers guarantee the performance of the contracts for the life of the contracts or that they disclose to consumers the party who is financially responsible for the performance of the contracts.

In addition, there are no legal requirements concerning the financial viability of service contracts. Several major sellers of service contracts, including \*EWC\* and Component Guard, have gone out of business within the past year, leaving hundreds of thousands of California consumers with worthless contracts.

Vote: ASSEMBLY

Floor: Aye 54 No 14  
Policy Committee: Aye 9 No 1  
Fiscal Committee: Aye 19 No 0

Vote: SENATE

Floor: Aye 22 No 0  
Policy Committee: Aye 10 No 0  
Fiscal Committee: Aye 28 No 8

RECOMMENDATION  
TO GOVERNOR:SIGN ☒ VETO ☐DEFER TO OTHER  
AGENCY

DEPARTMENT DIRECTOR:

DATE:

AGENCY SECRETARY

DATE:

EBR 11/91

000090

0081

MJN/823

document received by the 4th District Court of Appeals Division 2.

Prior Legislation:

AB 2285 (Moore) Chapter 1047, Statutes of 1985, authorized the sale of service contracts covering motor vehicles as long as the contracts disclose the terms, conditions, and exclusions as well as the buyer's cancellation and refund rights. AB 2285 required that service contracts be available for inspection by the buyer before the purchase, and be delivered to the buyer within 60 days of purchase. The bill also mandated buyer refund rights in the event of a contract cancellation.

AB 4570 (Duplissea) Chapter 582, Statutes of 1988, extended the provisions of AB 2285 to make certain disclosures and to contain specific information in service contracts sold on home appliances or home electronic products.

AB 4468 (Elder) was vetoed in 1988 and would have required third-party administrators providing a service contract for consumer goods, other than motor vehicles, to obtain an insurance policy on the contract in an amount sufficient to cover any foreseeable losses under the service contract.

AB 2226 (Epple) was vetoed in 1990 and would have prohibited service contracts from duplicating express warranty coverage on home appliances and home electronic products.

SB 2086 (Rosenthal) failed passage in the Assembly in 1990 and would have required service contracts to contain information relating to the protection of the buyer from loss in the event of bankruptcy or insolvency of the service contract seller.

AB 3374 (Epple) was vetoed in 1992 and would have provided a comprehensive scheme for the regulation of motor vehicle service contract administrators by the Insurance Commissioner. The Governor's veto message indicated that the Department of Insurance lacked the experience to handle the increased enforcement burden contemplated by the bill. In addition, the message indicated the enforcement of these contracts was best carried out by the Department of Consumer Affairs because of its expertise in the auto repair field.

SPECIFIC FINDINGS

SB 798 would ensure that a consumer is informed and has recourse if the service contractor fails to comply with the terms of the service contract by requiring that the service contractor or be insured for all obligations and liabilities it incurs.

SB 798 would create a registration program similar to the one the BEAR manages for electronic and appliance repair dealers. It would require all sellers of service contracts to register with the BEAR by paying a fee. It would authorize the BEAR to require that its name and address be imprinted on every contract. SB 798 also would authorize the BEAR to investigate and mediate complaints arising from violations of the Song-Beverly Consumer Warranty Act.

The BEAR would be authorized to enforce the provisions of this bill through revocation or suspension of registration and by issuing citation infractions or administrative citations and fines.

000091

0081

MJN/824

document received by the CA 4th District Court of Appeal Division 2.

The BEAR estimates that there are approximately 10,000 potential registrants in California as well as out-of-state registrants who would be required to comply. The bill it would become effective January 1, 1994.

The bill is sponsored by the California Retailers Association and is supported by most affected industry associations and by the Consumers Union. The Department of Insurance also supports this bill.

FISCAL IMPACT

The Department of Consumer Affairs' Budget Office has prepared the attached fiscal analysis on SB 798.

INTERESTED PARTIES AND ARGUMENTS

Proponents: California Retailers Association (Sponsor)  
Electronics Industries Association  
Consumers Union  
Department of Insurance

Opponents: Service Contractors Industry Council

ARGUMENTS

Proponents argue that this bill is needed to ensure that a consumer has some recourse if the service contractor fails to comply with the terms of the service contract, and also to require that service contractors themselves are insured for all obligations and liabilities they incur.

Opponents argue that consumers have adequate legal remedies when a service contractor fails to comply with the terms of a service contract.

RECOMMENDATION

The Department of Consumer Affairs recommends that the Governor SIGN Senate Bill 798.

000092

00819

MJN/825

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00826

**MJN/826**

Document received by the CA 4th District Court of Appeal Division 2.

inspected and found not in compliance with this article, or any regulation implementing it, to pay such reasonable fees as are necessary to cover the costs of inspections and testing necessary to investigate and enforce compliance by those manufacturers, distributors, and retailers. Fees shall be fixed in an amount not more than the cost of testing and inspection with a minimum fee of two hundred dollars (\$200) for each test or inspection. The bureau may also conduct, or contract with approved independent third party laboratories to conduct, independent performance tests of insulation materials sold in the state, in order to determine compliance with its adopted standards. Where a fee is not paid, the full amount of the assessed fee shall be added to the fee for the renewal of a license. A license shall not be renewed without payment of the renewal fee and all fees for testing and inspection.

SEC. 93. Section 19213.1 of the Business and Professions Code is amended to read:

19213.1. The bureau may require a licensee who sells or manufactures furniture and bedding products that are inspected and found not to be in compliance with this chapter, or any regulation implementing it, to pay those reasonable fees as are necessary to cover the costs of inspections and testing necessary to investigate and enforce compliance by those licenses. Fees shall be fixed in an amount not more than the cost of testing and inspection except that the minimum fee shall be two hundred dollars (\$200) for each test or inspection. The range of fees for testing or inspection shall be fixed by the bureau in an amount not less than two hundred dollars (\$200) and not more than five hundred dollars (\$500) for each test or inspection. Where a fee is not paid, the full amount of the assessed fee shall be added to the fee for the renewal of a license. A license shall not be renewed without payment of the renewal fee and all fees for testing and inspection.

SEC. 94. Section 19220 of the Business and Professions Code is amended to read:

19220. Every person who violates any of the provisions of this chapter is guilty of a misdemeanor and punishable for each offense by a fine of not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) or by imprisonment for not less than three nor more than six months or by both such fine and imprisonment.

SEC. 95. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivision (c), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivision (c), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not

contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed two thousand five hundred dollars (\$2,500).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

SEC. 96. Chapter 1.5 (commencing with Section 1249.5) of Division 2 of the Health and Safety Code is repealed.

SEC. 97. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

#### CHAPTER 1265

An act to amend Sections 9830, 9832, and 9847 of, to amend, repeal, and add Sections 9849, 9851, 9853, 9860, 9863, and 9873 of, to add and repeal Sections 146.5, 9830.5, 9832.5, 9847.5, and 9862.5 of, and to add and repeal Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of, the Business and Professions Code, to amend, repeal, and add Sections 1791 and 1794.4 of the Civil Code, and to amend Section 6254 of the Government Code, relating to electronic and appliance repair.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 146.5 is added to the Business and Professions Code, to read:

146.5. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following occur:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Section 2630.
- (2) Section 2903.
- (3) Sections 3760 and 3761.
- (4) Section 4825.
- (5) Section 4980.
- (6) Section 4996.
- (7) Section 5536.
- (8) Section 6704.
- (9) Section 6980.10.
- (10) Section 7317.
- (11) Section 7502 or 7592.
- (12) Section 7617 or 7641.
- (13) Subdivision (a) of Section 7872.
- (14) Section 8016.
- (15) Section 8305.
- (16) Section 8725.
- (17) Section 9681.
- (18) Section 9840.
- (19) Section 9855.1.
- (20) Section 9884.6.
- (21) Subdivision (c) of Section 9891.24.
- (22) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250)

and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 1.5. Section 9830 of the Business and Professions Code is amended to read:

9830. Each service dealer shall pay the fee required by this chapter for each place of business operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service dealer, including name, address, a copy of the certificate of qualification as filed with the Secretary of State if the service dealer is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service dealer is a partnership, identifying data shall be stated for each partner. If the service dealer is a private company that does not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each of the officers and directors of the company as well as for the individual in charge of each place of the service dealer's business in the State of California, subject to such regulations as the director may make. If the service dealer is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

A service dealer who does not operate a place of business in this state, but who engages in the electronic repair industry or the appliance repair industry in this state, shall hold a valid registration issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

SEC. 1.7. Section 9830.5 is added to the Business and Professions Code, to read:

9830.5. Each service contractor shall pay the fee required by this chapter for each place of business operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service contractor, including name, address, a copy of the certificate of qualification as filed with the Secretary of State if the service contractor is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service contractor is a partnership, identifying data shall be stated for each partner. If the service contractor is a private company that does



not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each of the officers and directors of the company as well as for the individual in charge of each place of the service contractor's business in the State of California, subject to such regulations as the director may make. If the service contractor is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

A service contractor who does not operate a place of business in this state but who sells, issues, or administers service contracts in this state, shall hold a valid registration issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 9832 of the Business and Professions Code is amended to read:

9832. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service dealer shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service dealer shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and, if the registration is renewed more than 30 days after it ceased to be valid, pay all accrued and unpaid delinquency and renewal fees.

(d) A registration which is delinquent more than two years may not be renewed. A service dealer with a delinquent registration is required to reapply for registration. Renewal is effective on the date on which the application is filed and the renewal fee is paid. If there is a delinquency fee, renewal shall be effective upon payment of that fee.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend by not more than six months, the date fixed by law for renewal of a registration, except that in such event any renewal fee which may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

SEC. 2.5. Section 9832.5 is added to the Business and Professions Code, to read:

9832.5. (a) Registrations issued under this chapter shall expire

no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service contractor shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service contractor shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and if the registration is renewed more than 30 days after it ceased to be valid, pay all accrued and unpaid delinquency and renewal fees.

(d) A registration which is delinquent more than two years may not be renewed. A service contractor with a delinquent registration is required to reapply for registration. Renewal is effective on the date on which the application is filed and the renewal fee is paid. If there is a delinquency fee, renewal shall be effective upon payment of that fee.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend, by not more than six months, the date fixed by law for renewal of a registration, except that in the event any renewal fee which may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

(f) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 9847 of the Business and Professions Code is amended to read:

9847. Each service dealer shall maintain all records that are required by the regulations adopted to carry out the provisions of this chapter for a period of at least three years. These records shall be open for reasonable inspection by the director or other law enforcement officials.

SEC. 3.5. Section 9847.5 is added to the Business and Professions Code, to read:

9847.5. Each service contractor shall maintain those records as are required by the regulations adopted to carry out the provisions of this chapter for a period of at least three years. These records shall be open for reasonable inspection by the director or other law enforcement officials.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. Section 9849 of the Business and Professions Code is amended to read:

9849. The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing



on a cease and desist order against a service dealer or service contractor or to render a decision invalidating a registration temporarily or permanently.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4.5. Section 9849 is added to the Business and Professions Code, to read:

9849. The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing on a cease and desist order against a service dealer or to render a decision invalidating a registration temporarily or permanently.

This section shall become operative on January 1, 1998.

SEC. 5. Section 9851 of the Business and Professions Code is amended to read:

9851. The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer or service contractor in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining such conduct.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 5.5. Section 9851 is added to the Business and Professions Code, to read:

9851. The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining such conduct.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

This section shall become operative on January 1, 1998.

SEC. 6. Section 9853 of the Business and Professions Code is amended to read:

9853. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer or service contractor is deemed to be a conviction within the meaning of this article. The director may order the registration temporarily or permanently invalidated, or may decline to issue a registration, when

the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code, allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 6.6. Section 9853 is added to the Business and Professions Code, to read:

9853. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a service dealer is deemed to be a conviction within the meaning of this article. The director may order the registration temporarily or permanently invalidated, or may decline to issue a registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

This section shall become operative on January 1, 1998.

SEC. 7. Article 4.5 (commencing with Section 9855) is added to Chapter 20 of Division 3 of the Business and Professions Code, to read:

#### Article 4.5. Service Contractors

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a set or appliance as defined by this chapter.

(b) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

- (1) Providing service contract sellers with service contract forms.
- (2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract.

(c) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder.

(d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

(e) "Service contractor" means a service contract administrator or a service contract seller.

(f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

9855.1. It shall be unlawful for any person to act as a service contractor in this state unless that person first registers with the bureau in accordance with the provisions of this chapter and maintains a valid registration.

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless he or she complies with one of the following requirements:

(1) Files with the director the most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government, the director may deem that statement an acceptable substitute for Form 10-K.

(2) Obtains a service contract reimbursement insurance policy.

(3) Sells service contracts which are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller's service contracts.

(4) Maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

(b) A service contract administrator shall not administer service contracts sold in this state, unless a service contract reimbursement insurance policy covering these service contracts has been obtained.

9855.3. (a) The service contract form to be issued by the service contractor shall be filed with the director by the service contractor prior to its use.

(b) Every service contract administrator shall file with its application for registration, and thereafter, with its application for registration renewal, a service contract reimbursement insurance

policy.

(c) Every service contract seller shall file with his or her application for registration, and thereafter with his or her application for registration renewal, one of the following:

(1) The most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government, the director may deem that statement an acceptable substitute for Form 10-K.

(2) A service contract reimbursement insurance policy.

(3) Evidence that his or her service contracts are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller's service contracts.

(4) Evidence of a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

9855.4. (a) The service contract reimbursement insurance policy shall cover the obligations of the service contract seller under the service contracts sold during the period of time that the service contract reimbursement insurance policy was in force. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(b) A service contract reimbursement insurance policy shall contain a provision under which the insurer shall notify the bureau in writing of the termination or nonrenewal of the service contract reimbursement insurance policy.

(c) Upon the effective date of the termination or cancellation of a service contractor's service contract reimbursement insurance policy, the registration of the service contractors whose service contracts are covered thereby shall be automatically suspended, unless the affected service contractors have filed with the director, prior to the date of the termination or cancellation of the service contract reimbursement insurance policy, a new service contract reimbursement insurance policy or otherwise meet one of the requirements of Section 9855.2. Upon receipt of a written request from the service contractor, the director may delay the suspension of a service contractor's registration for no more than 60 days. Following the automatic suspension, an administrative hearing shall be provided upon written request to the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

9855.5. A service contractor shall comply with the provisions of Sections 1794.4 and 1794.41 of the Civil Code.

9855.6. Where a service contract holder cancels a service contract in accordance with the provisions of Section 1794.41 of the Civil Code

and the refund due is not paid to the service contract holder or credited to his or her account within 30 days after the service contractor receives written notice of cancellation, the amount of the required refund or credit shall bear interest, payable to the service contract holder, at the rate of 10 percent per annum for each additional 30 days or fraction thereof.

9855.7. The director may refuse to validate, or may temporarily or permanently invalidate the registration of a service contractor for any act, omission, or crime that is committed by the service contractor or any employee, partner, officer, or agent of the service contractor for any of the following reasons:

- (a) Any conduct which constitutes fraud or dishonest dealing.
- (b) Conviction of a crime which has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which event the record of conviction shall be conclusive evidence thereof.
- (c) Assisting in or abetting the violation of, or conspiring to violate, any provision of this article, or of regulations adopted under this article.

9855.8. (a) The director may issue a citation to the service contractor for any of the following reasons:

- (1) Violation of subdivision (a) of Section 9855.3 or Section 9855.5, or any regulation adopted thereunder.

(2) Upon a determination by the director that the service contractor has committed a violation by (A) making or authorizing statements or advertisements which are untrue or misleading; or (B) making false promises of a character likely to influence, persuade, or induce a customer to purchase a service contract as provided by this chapter.

(3) For purposes of this section, a violation consists of a single publication or single course of conduct which is determined by the director to be untrue or misleading.

(b) The citation may contain an order of abatement and an order to pay an administrative fine assessed by the director.

(1) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) A citation or fine assessment issued pursuant to a citation shall inform the service contractor that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the bureau within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(4) (A) In addition to requesting a hearing as provided for

herein, the service contractor may request a citation review conference with the director or his or her designee regarding the acts charged in the citation. A citation review conference shall be requested by written notice to the bureau within 20 days of the date of the issuance of the citation or assessment.

(B) The director or his or her designee shall hold a citation review conference within 60 days from the receipt of the request. At the conclusion of the citation review conference, the director or his or her designee shall state, in writing, the reasons for his or her action and transmit a copy of his or her findings and decision to the service contractor.

(5) The failure of a service contractor to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the director. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the registration. A registration shall not be renewed without payment of the renewal fee and fine.

(c) Where a citation includes an administrative fine, it shall be issued in accordance with the following procedures:

(1) For the first citation, the director may assess an administrative fine of not less than one hundred dollars (\$100) but not more than five hundred dollars (\$500).

(2) For the second citation issued during any one year period, the director may assess an administrative fine of not less than five hundred dollars (\$500) but not more than one thousand dollars (\$1,000).

(3) For the third citation issued during any two-year period, the director may assess an administrative fine of not less than one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(4) For the fourth violation of subdivision (a) of Section 9855.3 or of Section 9855.5, or any regulation adopted thereunder, during any two-year period, the director may either assess an administrative fine of not less than one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000) or invalidate temporarily or permanently the registration of the service contractor.

9855.9. This article shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 8. Section 9860 of the Business and Professions Code is amended to read:

9860. The director shall establish procedures for accepting complaints from the public against any service dealer or service contractor.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 8.5. Section 9860 is added to the Business and Professions

860000



Code, to read:

9860. The director shall establish procedures for accepting complaints from the public against any service dealer.

This section shall become operative on January 1, 1998.

SEC. 9. Section 9862 of the Business and Professions Code is amended to read:

9862. If a complaint indicates a possible violation of this chapter or of the regulations made pursuant to this chapter, the director shall advise the service dealer of the contents of the complaint and, after the service dealer has had reasonable opportunity to reply thereto, the director shall make a summary investigation of the facts.

SEC. 9.5. Section 9862.5 is added to the Business and Professions Code, to read:

9862.5. If a complaint indicates a possible violation of this chapter or of the regulations made pursuant to this chapter, the director shall advise the service contractor of the contents of the complaints and, after the service contractor has had reasonable opportunity to reply thereto, the director shall make a summary investigation of the facts.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 10. Section 9863 of the Business and Professions Code is amended to read:

9863. If, upon summary investigation, it appears to the director probable that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer or service contractor accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer or service contractor declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 10.5. Section 9863 is added to the Business and Professions Code, to read:

9863. If, upon summary investigation, it appears to the director probable that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the

director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

This section shall become operative on January 1, 1998.

SEC. 11. Section 9873 of the Business and Professions Code is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) (1) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred thirty dollars (\$130) for each place of business in this state. The initial registration fee for a service contractor is not more than sixty dollars (\$60) for each place of business in this state.

(2) The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than two hundred sixty dollars (\$260) for each place of business in this state. The initial registration fee for a person who is a service contractor and engages in business as either an electronic repair industry service dealer or an appliance repair industry service dealer is not more than one hundred ninety dollars (\$190) for each place of business in this state.

(3) The initial registration fee for a person who engages in both the electronic repair industry and the appliance repair industry as a service dealer and is a service contractor is not more than three hundred twenty dollars (\$320) for each place of business in this state.

A service dealer or service contractor who does not operate a place of business in this state, but engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(b) (1) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred thirty dollars (\$130) for each place of business in this state, if renewed prior to its expiration date. The annual registration renewal fee for a service contractor is sixty dollars (\$60) for each place of business in this state, if renewed prior to its expiration date.

(2) The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than two hundred thirty-five dollars (\$235) for each place of business in this state.

(3) The annual renewal fee for a service dealer who engages in the electronic repair industry and the appliance repair industry and is a service contractor is not more than two hundred ninety-five dollars (\$295) for each place of business in this state.

A service dealer or service contractor who does not operate a place

of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for such license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 11.5. Section 9873 is added to the Business and Professions Code, to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred thirty dollars (\$130) for each place of business in this state. The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than two hundred sixty dollars (\$260).

(b) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred thirty dollars (\$130) for each place of business in this state, if renewed prior to its expiration date. The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than two hundred thirty-five dollars (\$235).

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for such license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

This section shall become operative on January 1, 1998.

SEC. 12. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling such goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, association, or other legal entity which engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn,

fiber, or leather or similar fabric.

(d) "Consumables" means any product which is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

(l) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, for an additional cost, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or

disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.  
(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2. A service contract administrator shall not be an obligor on a service contract.

(q) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder.

(r) "Service contractor" means a service contract administrator or a service contract seller.

(s) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code, and unless they are intended to assist the limited vision of the person so disabled.

(t) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(u) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.

(v) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 12.5. Section 1791 is added to the Civil Code, to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof

that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling such goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, association, or other legal entity which engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product which is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

(l) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the



retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are intended to assist the limited vision of the person so disabled.

(q) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(r) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.

(s) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

This section shall become operative on January 1, 1998.

SEC. 13. Section 1794.4 of the Civil Code is amended to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to, or in lieu of, an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contract

seller to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) A clear description and identification of the covered product.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(4) A statement of the general obligation of the service contract seller in the same language set forth in subdivision (b), with equally clear and conspicuous statements of (A) any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs or remedies that are excluded from the scope of the service contract; (B) any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls; (C) any additional services which the service contract seller will provide; (D) whether the obligation of the service contract seller includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide; and (E) whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(5) A step-by-step explanation of the procedure which the buyer should follow in order to obtain performance of any obligation under the service contract, including (A) the full legal and business name of the service contract seller; (B) the mailing address of the service contract seller; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any administrator, agent, employee, or department of the service contract seller that is responsible for the performance of any obligations; (E) the method of giving notice to the service contract seller of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contract seller; (G) if the product must be transported to the service contract seller, either the place where the product may be delivered for service or repairs or a toll-free telephone number which the buyer may call to obtain that information; (H) all other steps which the buyer must take to obtain service; and (I) all fees, charges, and other costs that the buyer must pay to obtain service.

000102



(6) An explanation of the steps that the service contract seller will take to carry out its obligations under the service contract.

(7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(8) Information respecting the availability of any informal dispute settlement process.

(9) A statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

Nothing in this subdivision shall preclude a service contract seller from designating an administrator that a service contract holder may initially contact for performance of the obligations under the service contract.

(d) Subdivisions (b) and (c) of this section are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

(e) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 13.5. Section 1794.4 is added to the Civil Code, to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contractor to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) A clear description and identification of the covered product.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(4) A statement of the general obligation of the service contractor in the same language set forth in subdivision (b), with equally clear and conspicuous statements of (A) any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs or remedies that are excluded from the scope of the service contract; (B) any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls; (C) any additional services which the service contractor will provide; (D) whether the obligation of the service contractor includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide; and (E) whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(5) A step-by-step explanation of the procedure which the buyer should follow in order to obtain performance of any obligation under the service contract including (A) the full legal and business name of the service contractor; (B) the mailing address of the service contractor; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any agent, employee or department of the service contractor that is responsible for the performance of any obligations; (E) the method of giving notice to the service contractor of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contractor; (G) if the product must be transported to the service contractor, either the place where the product may be delivered for service or repairs or a toll-free telephone number which the buyer may call to obtain that information; (H) all other steps which the buyer must take to obtain service; and (I) all fees, charges, and other costs that the buyer must pay to obtain service.

(6) An explanation of the steps that the service contractor will take to carry out its obligations under the service contract.

(7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(8) Information respecting the availability of any informal dispute settlement process.

(d) Subdivisions (b) and (c) of this section are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

(e) This section shall become operative on January 1, 1998.

SEC. 14. Section 6254 of the Government Code, as amended by Section 2 of Chapter 1128 of the Statutes of 1992, is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion,

larceny, robbery, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment,

or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not

have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the



contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to

inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

#### CHAPTER 1266

An act to amend Sections 7528, 7532, 7546.9, 7547.5, 7596.5, and 7598.14 of, and to amend, repeal, and add Sections 7511, 7570, and 7599.70 of, the Business and Professions Code, relating to investigative services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 1993. Filed with  
Secretary of State October 11, 1993.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 7511 of the Business and Professions Code is amended to read:

7511. Upon the effective date of the amendments to this section

CALIFORNIA LEGISLATURE

1993-94 REGULAR SESSION

# SUMMARY DIGEST

*of*

Statutes Enacted and Resolutions (Including Proposed  
Constitutional Amendments) Adopted in 1993

*and*

1989-1993 Statutory Record



RICK ROLLENS  
*Secretary of the Senate*

E. DOTSON WILSON  
*Chief Clerk of the Assembly*

*Compiled by*  
BION M. GREGORY  
*Legislative Counsel*

000107

0083

MJN/841

Document received by the CA 4th District Court of Appeal Division 2.

Ch. 1264 (SB 574) Boatwright. Department of Consumer Affairs.

Existing law establishes the Department of Consumer Affairs. Under existing law, there are various professional and vocational boards and similar entities in the department with responsibilities for the licensure and discipline of various licensed professions and vocations.

This bill would, among other things, do all of the following:

(1) Revise certain experience requirements and renewal periods with respect to repossession agencies and repossessioners.

(1.1) Revise certain revenue and fee provisions relative to psychiatric technicians.

(1.2) Increase the required amount of a contractor's bond and a qualifying individual's bond, and make related changes, as specified.

(1.3) Provide that engaging in a business as an unlicensed private investigator or private patrol operator is an infraction under specified circumstances.

(2) Remove from licensure and regulation protection dog operators.

(3) Remove various conditions upon licensure of alarm company operators, and revise provisions relating to the operation of alarm companies, as specified.

(4) Consolidate the list of electronic items under the term "electronic set" with respect to the jurisdiction of the Bureau of Electronic and Appliance Repair.

(5) Delete certain references to the Bureau of Automotive Repair Advisory Board.

(6) Delete the category of "tax interviewer" from registration of tax preparer provisions.

(7) Eliminate the Tax Preparer Advisory Committee.

(8) Increase certain license renewal delinquency fee amounts, revise certain financial provisions, and increase certain fine amounts for home furnishings' licensees, as specified.

(8.5) Increase the license fees for certain home furnishings' licensees, as specified, and provide a fee for licensure as a retail furniture and bedding dealer.

(9) Eliminate licensure and regulation of medical provider consultants.

(10) The bill would also make conforming, clarifying, and related changes. It would specify certain penalty provisions including the penalty of perjury. The bill would thus impose a state-mandated local program by expanding the scope of an existing crime.

(11) Under existing law, the small claims court has jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed \$1,500.

This bill would increase that limit to \$2,500.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Ch. 1265 (SB 798) Rosenthal. Electronic and appliance repair: service contractors.

Existing law known as the Electronic and Appliance Repair Dealer Registration Law requires a service dealer, as defined, to register with the Bureau of Electronic and Appliance Repair, as specified.

This bill would require the registration of service contractors, as defined, and would prohibit a service contract seller, as defined, from issuing, selling, or offering for sale a service contract unless he or she (1) discloses certain financial information, (2) obtains a service contract reimbursement insurance policy, (3) sells service contracts which are administered by a service contract administrator, as defined, who has obtained service contract reimbursement insurance, or (4) maintains a specified funded escrow account. The bill would also prohibit a service contract administrator from administering service contracts unless he or she has obtained a service contract reimbursement insurance policy. Among other things, this bill would require the filing of the form of a service contract issued by a service contractor prior to its use and would authorize the Director of Consumer Affairs to invalidate the registration of a service contractor for specified reasons and to investigate complaints against a service contractor. The bill would require a service contractor to pay various registration and renewal fees, as specified.

NOTE: Superior numbers appear as a separate section at the end of the digests.

000108

0083

MJN/842

Document received by the CA 4th District Court of Appeal Division 2.

Existing law requires a service dealer to pay a specified fee for each place of business operated in this state.

This bill would require a service dealer or a service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state, to hold a valid registration and to pay required registration fees.

Existing law permits the sale of a service contract to a buyer, except as specified, in addition to or in lieu of an express warranty if the contract fully discloses the terms, conditions, and exclusions of the contract and the contract contains specified information.

This bill would require the contract to include a statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

The bill would set forth grounds for various citations and administrative fines, as specified.

The bill would also add, as an exception to the disclosure provisions of the California Public Records Act, specified financial data contained in applications for registration or registration renewal as a service contractor or financial data regarding funded escrow accounts for service contracts.

Various provisions of the bill would be operative only until January 1, 1998, as specified.

Existing law provides that any violation of the Electronic and Appliance Repair Dealer Registration Law is a misdemeanor.

This bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Ch. 1266 (SB 756) Kelley. Private investigators.

Existing law provides for various fees for persons licensed by the Bureau of Collection and Investigative Services as private investigators, private patrol operators, and related capacities.

This bill would increase those fees, except as specified. It would make additional changes on January 1, 1995 and January 1, 1998.

The bill would appropriate \$1,411,000 as an augmentation to a specified item of the Budget Act of 1993 from the Private Investigator Fund.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 1267 (SB 916) Presley. Medical quality: reporting: disciplinary actions: hearings.

(1) Existing law establishes a Medical Board of California to administer and enforce provisions relating to licensure and regulation of physicians and surgeons. Existing law requires that the board consist of 3 divisions of specified composition. Under existing law, the 3 divisions are the Division of Allied Health Professions, the Division of Licensing, and the Division of Medical Quality. Under existing law, the Division of Medical Quality of the Medical Board of California is responsible for the administration and hearing of disciplinary actions against physicians and surgeons.

This bill would, commencing July 1, 1994, eliminate the Division of Allied Health Professions, and would require the board to establish a Committee on Allied Health Professions. This bill would also, commencing January 1, 1994, revise the composition of the Division of Medical Quality, and revise the duties of the division relating to disciplinary actions against physicians and surgeons.

This bill would make conforming changes transferring certain responsibilities of the Division of Allied Health Professions relating to psychoanalysts, optometrists, and registered dispensing opticians, and perfusionists to the Division of Licensing.

This bill would require the State Auditor to perform an audit of the disciplinary system, regarding specified information, and to send a report on the audit to the Chairp-

NOTE: Superior numbers appear as a separate section at the end of the digests.

000109

0083

MJN/843

Document received by the CA 4th District Court of Appeal Division 2.



**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0083

**MJN/844**

document received by the CA 4th District Court of Appeal Division 2.

VOLUME 2  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1997-98 REGULAR SESSION  
1997-98 FIRST EXTRAORDINARY SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,  
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 1996

Recessed December 2, 1996	Reconvened January 6, 1997
Recessed March 21, 1997	Reconvened March 31, 1997
Recessed August 12, 1997	Reconvened August 25, 1997
Recessed September 13, 1997	Reconvened January 5, 1998
Recessed April 2, 1998	Reconvened April 13, 1998

Adjourned September 1, 1998  
Adjourned Sine Die November 30, 1998

Legislative Days .....	268
Calendar Days .....	729

HON. ANTONIO R. VILLARAIGOSA  
*Speaker*

HON. SHEILA JAMES KUEHL  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. JOE BACA  
*Speaker pro Tempore*

HON. ROD PACHECO  
*Minority Floor Leader*

Compiled Under the Direction of  
E. DOTSON WILSON  
*Chief Clerk*

AMY DUARTE  
*History Clerk*

DARCI KING  
*Assistant History Clerk*

000110

00839

MJN/845

Document received by the CA 4th District Court of Appeal Division 2.

1944

ASSEMBLY FINAL HISTORY

A.B. No. 2704—Alquist (Coauthor: Senator Watson).

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

1998

- Feb. 23—Joint Rule 54 suspended. Assembly Rule 49(c) suspended. Read first time. To print.
- Feb. 24—From printer. May be heard in committee March 26.
- Mar. 19—Referred to Com. on C.P., G.E. & E.D.
- May 11—From committee: Amend, and do pass as amended. (Ayes 11. Noes 0.) (May 5).
- May 12—Read second time and amended. Ordered returned to second reading.
- May 13—Read second time. To third reading.
- May 14—Read third time, passed, and to Senate. (Ayes 72. Noes 1. Page 678.)
- May 14—In Senate. Read first time. To Com. on RLS. for assignment.
- June 16—Referred to Com. on B. & P.
- June 17—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B. & P.
- June 25—From committee: Amend, and do pass as amended. To Consent Calendar. (June 25).
- June 29—Read second time, amended, and to Consent Calendar.
- July 2—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 5370.)
- July 2—In Assembly. Concurrence in Senate amendments pending. May be considered on or after July 4 pursuant to Assembly Rule 77.
- July 7—Senate amendments concurred in. To enrollment. (Ayes 69. Noes 0. Page 7812.)
- July 9—Enrolled and to the Governor at 2:30 p.m.
- July 20—Approved by the Governor.
- July 21—Chaptered by Secretary of State - Chapter 196, Statutes of 1998.

000111

00

MJN/846

Document received by the CA 4th District Court of Appeal Division 2.

**ASSEMBLY BILL**

**No. 2704**

**Introduced by Assembly Member Alquist**

February 23, 1998

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, as introduced, Alquist. Service contracts.

Existing law regulating the activities of service contractors, including service contract sellers, defines a service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, as defined. Existing law regulating consumer warranties provides for substantially the same definition of a "service contract seller" with respect to the maintenance or repair of consumer products, as defined.

This bill would add to the definition of "service contract seller" or "seller," for purposes of both regulatory laws, a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

000112

0084<sup>99</sup>

**MJN/847**

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9855 of the Business and  
2 Professions Code is amended to read:

3 9855. The definitions used in this section shall govern  
4 the construction and terms as used in this chapter:

5 (a) "Service contract" means a contract in writing to  
6 perform, over a fixed period of time or for a specified  
7 duration, services relating to the maintenance or repair  
8 of a set or appliance as defined by this chapter.

9 (b) "Service contract administrator" or  
10 "administrator" means a person, other than a service  
11 contract seller or an insurer admitted to do business in  
12 this state, who performs or arranges, or has an affiliate  
13 who performs or arranges, the collection, maintenance,  
14 or disbursement of moneys to compensate any party for  
15 claims or repairs pursuant to a service contract, and who  
16 also performs or arranges, or has an affiliate who performs  
17 or arranges, any of the following activities on behalf of  
18 service contract sellers:

19 (1) Providing service contract sellers with service  
20 contract forms.

21 (2) Participating in the adjustment of claims arising  
22 from service contracts.

23 (3) Arranging on behalf of service contract sellers the  
24 insurance required by Section 9855.2.

25 A service contract administrator shall not be an obligor  
26 on a service contract.

27 (c) "Service contract seller" or "seller" means a  
28 person who sells or offers to sell a service contract to a  
29 service contractholder, *including a person who is the*  
30 *obligor under a service contract sold by the seller,*  
31 *manufacturer, or repairer of the product covered by the*  
32 *service contract.*

33 (d) "Service contractholder" means a person who  
34 purchases or receives a service contract from a service  
35 contract seller.

36 (e) "Service contractor" means a service contract  
37 administrator or a service contract seller.

1 (f) "Service contract reimbursement insurance  
2 policy" means a policy of insurance issued by an insurer  
3 admitted to do business in this state providing coverage  
4 for all obligations and liabilities incurred by a service  
5 contract seller under the terms of the service contracts  
6 sold in this state by the service contract seller to a service  
7 contractholder. The service contract reimbursement  
8 insurance policy shall either cover all service contracts  
9 sold or specifically cover those contracts sold to residents  
10 of the State of California.

11 SEC. 2. Section 1791 of the Civil Code is amended to  
12 read:

13 1791. As used in this chapter:

14 (a) "Consumer goods" means any new product or part  
15 thereof that is used, bought, or leased for use primarily for  
16 personal, family, or household purposes, except for  
17 clothing and consumables. "Consumer goods" shall  
18 include new and used assistive devices sold at retail.

19 (b) "Buyer" or "retail buyer" means any individual  
20 who buys consumer goods from a person engaged in the  
21 business of manufacturing, distributing, or selling  
22 consumer goods at retail. As used in this subdivision,  
23 "person" means any individual, partnership, corporation,  
24 limited liability company, association, or other legal  
25 entity that engages in any such business.

26 (c) "Clothing" means any wearing apparel, worn for  
27 any purpose, including under and outer garments, shoes,  
28 and accessories composed primarily of woven material,  
29 natural or synthetic yarn, fiber, or leather or similar  
30 fabric.

31 (d) "Consumables" means any product that is  
32 intended for consumption by individuals, or use by  
33 individuals for purposes of personal care or in the  
34 performance of services ordinarily rendered within the  
35 household, and that usually is consumed or expended in  
36 the course of consumption or use.

37 (e) "Distributor" means any individual, partnership,  
38 corporation, association, or other legal relationship that  
39 stands between the manufacturer and the retail seller in

000113

1 purchases, consignments, or contracts for sale of  
2 consumer goods.

3 (f) "Independent repair or service facility" or  
4 "independent service dealer" means any individual,  
5 partnership, corporation, association, or other legal  
6 entity, not an employee or subsidiary of a manufacturer  
7 or distributor, that engages in the business of servicing  
8 and repairing consumer goods.

9 (g) "Lease" means any contract for the lease or  
10 bailment for the use of consumer goods by an individual,  
11 for a term exceeding four months, primarily for personal,  
12 family, or household purposes, whether or not it is agreed  
13 that the lessee bears the risk of the consumer goods'  
14 depreciation.

15 (h) "Lessee" means an individual who leases  
16 consumer goods under a lease.

17 (i) "Lessor" means a person who regularly leases  
18 consumer goods under a lease.

19 (j) "Manufacturer" means any individual,  
20 partnership, corporation, association, or other legal  
21 relationship that manufactures, assembles, or produces  
22 consumer goods.

23 (k) "Place of business" means, for the purposes of any  
24 retail seller that sells consumer goods by catalog or mail  
25 order, the distribution point for these goods.

26 (l) "Retail seller," "seller," or "retailer" means any  
27 individual, partnership, corporation, association, or other  
28 legal relationship that engages in the business of selling or  
29 leasing consumer goods to retail buyers.

30 (m) "Return to the retail seller" means, for the  
31 purposes of any retail seller that sells consumer goods by  
32 catalog or mail order, the retail seller's place of business,  
33 as defined in subdivision (k).

34 (n) "Sale" means (1) the passing of title from the seller  
35 to the buyer for a price, or (2) a consignment for sale.

36 (o) "Service contract" means a contract in writing to  
37 perform, for an additional cost, over a fixed period of time  
38 or for a specified duration, services relating to the  
39 maintenance or repair of a consumer product, except that  
40 this term does not include a policy of automobile

1 insurance, as defined in Section 116 of the Insurance  
2 Code.

3 (p) "Service contract administrator" or  
4 "administrator" means a person, other than a service  
5 contract seller or an insurer admitted to do business in  
6 this state, who performs or arranges, or has an affiliate  
7 who performs or arranges, the collection, maintenance,  
8 or disbursement of moneys to compensate any party for  
9 claims or repairs pursuant to a service contract, and who  
10 also performs or arranges, or has an affiliate who performs  
11 or arranges, any of the following activities on behalf of  
12 service contract sellers:

13 (1) Providing service contract sellers with service  
14 contract forms.

15 (2) Participating in the adjustment of claims arising  
16 from service contracts.

17 (3) Arranging on behalf of service contract sellers the  
18 insurance required by Section 9855.2. A service contract  
19 administrator shall not be an obligor on a service contract.

20 (q) "Service contract seller" or "seller" means a  
21 person who sells or offers to sell a service contract to a  
22 service contractholder, *including a person who is the*  
23 *obligor under a service contract sold by the seller,*  
24 *manufacturer, or repairer of the product covered by the*  
25 *service contract.*

26 (r) "Service contractor" means a service contract  
27 administrator or a service contract seller.

28 (s) "Assistive device" means any instrument,  
29 apparatus, or contrivance, including any component or  
30 part thereof or accessory thereto, that is used or intended  
31 to be used, to assist an individual with a disability in the  
32 mitigation or treatment of an injury or disease or to assist  
33 or affect or replace the structure or any function of the  
34 body of an individual with a disability, except that this  
35 term does not include prescriptive lenses and other  
36 ophthalmic goods unless they are sold or dispensed to  
37 blind person, as defined in Section 19153 of the Welfare  
38 and Institutions Code, and unless they are intended to  
39 assist the limited vision of the person so disabled.

000114



1 (t) "Catalog or similar sale" means a sale in which  
2 neither the seller nor any employee or agent of the seller  
3 nor any person related to the seller nor any person with  
4 a financial interest in the sale participates in the diagnosis  
5 of the buyer's condition or in the selection or fitting of the  
6 device.

7 (u) "Home appliance" means any refrigerator,  
8 freezer, range, microwave oven, washer, dryer,  
9 dishwasher, garbage disposal, trash compactor, or room  
10 air-conditioner normally used or sold for personal, family,  
11 or household purposes.

12 (v) "Home electronic product" means any television,  
13 radio, antenna rotator, audio or video recorder or  
14 playback equipment, video camera, video game, video  
15 monitor, computer equipment, telephone,  
16 telecommunications equipment, electronic alarm  
17 system, electronic appliance control system, or other kind  
18 of electronic product, if it is normally used or sold for  
19 personal, family, or household purposes. The term  
20 includes any electronic accessory that is normally used or  
21 sold with a home electronic product for one of those  
22 purposes. The term excludes any single product with a  
23 wholesale price to the retail seller of less than fifty dollars  
24 (\$50).

25 This section shall remain in effect only until January 1,  
26 2003, and as of that date is repealed, unless a later enacted  
27 statute, that is enacted before January 1, 2003, deletes or  
28 extends that date.

000115

0084  
4th District Court of Appeal Division 2.

**STATE AND CONSUMER SERVICES AGENCY****BILL ANALYSIS**

Department	Author	Bill Number
CONSUMER AFFAIRS	Alquist	AB 2704
Sponsor	Related Bills	Amended Date
California Retailers Association		Intro 2-23-98
Subject		
Service Contracts		

**Summary:**

The Department of Consumer Affairs Bureau of Electronic and Appliance Repair (BEAR) regulates service contract sellers. AB 2704 would add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

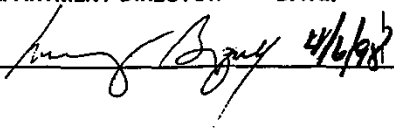
**Bill Description:****Existing law:**

Regulates the activities of service contractors including service contract sellers. The law defines service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances.

Regulating consumer warranties defines service contract seller with respect to the maintenance or repair of consumer products.

**This bill would:**

Add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

FEE /X/		FISCAL /X/		REPORT / /	
DEPARTMENTS THAT MAY BE AFFECTED					
DOI,					
STATE MANDATE / /			GOVERNOR'S APPOINTMENT / /		
DEPARTMENT DIRECTOR POSITION			AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE
<input type="checkbox"/> S	<input type="checkbox"/> O	<input type="checkbox"/> S	<input type="checkbox"/> O	POSITION APPROVD.	
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	POSITION DISAPP.	
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	POSITION NOTED	
<input checked="" type="checkbox"/> NIA	<input type="checkbox"/> NAR	<input checked="" type="checkbox"/> NIA	<input type="checkbox"/> NAR		
<input type="checkbox"/> DEFER		<input type="checkbox"/> DEFER			
DEPARTMENT DIRECTOR		DATE:	AGENCY SECRETARY	DATE:	ORIGINAL SIGNED BY
		4/6/98			HAPPY CHASTAIN
APR 8 1998					
DEPUTY SECRETARY LEGISLATION					

000116

0084

MJN/851

Document received by the CA 4th District Court of Appeals Division 2.

**Background:**

This bill is sponsored by the California Retailers Association to ensure that third-party obligors on service contracts are held to the same standard of accountability as the retailer or manufacturer that sells or administers the service contract.

**Specific Findings:**

The BEAR indicates that this bill would essentially codify existing policy. The BEAR currently registers third-party obligors on contracts sold by major retailers (Circuit City, Good Guys, Wards, Radio Shack) where the obligor has an exclusive relationship with one retailer. Apparently there are certain business and tax advantages for these large retailers to have a third party be the obligor on the service contracts they sell. The BEAR sees no erosion of consumer protection by this proposal as long as the company ultimately responsible for fulfilling the contract can meet the fiscal requirements of registration.

The BEAR has determined that this policy is in the spirit of existing law which is intended to ensure that service contracts, sold to consumers, are backed by responsible companies with demonstrated financial means to ensure the contracts.

The BEAR estimates that there are less than 10 companies that fit the definition in this bill and would be required to be registered.

The Department of Insurance, in a letter dated June 14, 1996, has stated that service contracts with a third-party obligor are provided as a convenience to consumers and are incidental to the sale of the product, therefore are not considered "insurance" within the ambit of the California Insurance Code. This interpretation allows these contracts to be administered by the DCA.

**Fiscal Impact:**

The BEAR estimates it would be required to register less than 10 obligors at \$75 a registration. The workload and revenue are projected to be minor.

**Support:**

None identified. (Verified 3-18-98)

**Opposition:**

None identified. (Verified 3-18-98)

**Arguments:**

**Pro:**

This bill provides the same accountability for the ultimate provider of security on a service contract as the company that interfaces with the customer.

000117

0084

**MJN/852**

Document received by the CA 4th District Court of Appeal Division 2.

Con:

Proposed language could be more narrowly crafted to specify third-party obligors *who have an exclusive relationship* with the seller, manufacturer or repairer of the product covered by the service contract.

Recommendation:

The Department of Consumer Affairs recommends a NEUTRAL IF AMENDMED position on AB 2704.

Prepared by: Dennis Weber, Analyst

Telephone: 324-5402

Ray Saatjian, Deputy Director

Telephone: 327-5196

000118

0084

**MJN/853**

Document received by the CA 4th District Court of Appeal Division 2.

Draft Language for amendment to AB 2704

Section 9855 of the Business and Professions Code

(g) "Obligor" is the entity financially and legally obligated to provide service on a service contract. An obligor may be one of the following:

A retailer who sells both the equipment and the contract to the consumer;

A manufacturer who manufactures the equipment and either sells the contract directly to the consumer or through a retail agent;

A service dealer who performs all service on the equipment and either sells the contract directly to the consumer or through a retail agent; or

A third party obligor, who is either a wholly-owned subsidiary of the retailer, manufacturer, or service dealer selling the contract, or a wholly-owned subsidiary of the insurance company that provides the service contract reimbursement insurance policy that covers contracts sold by the retailer, manufacturer, or service dealer. The third party obligor shall only be financially or legally obligated for a single retailer, manufacturer, or service dealer.

000119

0084

**MJN/854**

Document received by the CA 4th District Court of Appeal Division 2.

Consumer Protection, Governmental Efficiency and  
Economic Development Committee**Support**AB 2704 (ALQUIST)  
SERVICE CONTRACTS.

Version: 2/23/98 As Introduced

Vote: Majority

Support

Vice-Chair: Jim Morrissey

Tax or Fee Increase: No

Clarifies that an individual which sells a service contract for a product on behalf of another entity be subject to the same regulations to which the entity is subject.

**Policy Question**

Should an individual, which sells service contracts on behalf of a seller, manufacturer, or repairer of a product, be subject to the same regulations as that seller?

**Summary**

Clarifies that the definition of "service contract seller" includes individuals who are obligors under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract. Provides that these third party obligors will be subject to regulatory authority by the Bureau of Electronic and Appliance Repair (BEAR).

**Support**

CA Retailers Assn. (sponsor).; Circuit City Stores, Inc.

**Opposition**

None on file.

**Arguments In Support of the Bill**

Clarifies that BEAR has the authority to regulate third party obligors as sellers.

**Assembly Republican Consumer Protection Votes**  
(0-0) 5/5/98

Ayes: None  
Noes: None  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/98**

Ayes: None  
Noes: None  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/98**

Ayes: None  
Noes: None  
Abs. / NV: None

**Assembly Republican Votes (0-0) 1/1/98**

Ayes: None  
Noes: None  
Abs. / NV: None

**Arguments In Opposition to the Bill**

These service contract sellers, are retailing a product and should not be held to the same standard unless they are a direct party to the contract.

**Fiscal Effect**

Unknown.

**Comments**

1. Under existing law, a person which sells a service contract for a manufacturer, or repair facility is not legally subject to the same regulatory authority. However, the Bureau of Electronic and Appliance Repair (BEAR) treats third party obligors under service contracts as sellers pursuant to B&P Sec. 9855. This measure is intended to clarify the law to specifically provide that BEAR has the authority to regulate their party obligors as sellers.
2. The CA Retailers point out that, historically, the Bureau of Electronic and Appliance Repair (BEAR) has treated third party obligors under service contracts as sellers, under the Business and Professions Code. This measure will codify this long-standing practice. This measure will ensure that no other interpretation is made with regard to third party obligors.
3. Related Legislation includes SB 2075 (Polanco) which specifies that a "service contract" includes a contract in writing for maintenance or repair under which the seller of the service contract is responsible for maintenance or repair of the electronic set or appliance, other than a service contract offered by a building of a home in conjunction with the sale of a home.
4. The Department of Insurance, in a letter dated June 14, 1996, stated that service contracts with a third-party obligor are provided as a convenience to consumers and are incidental to the sale of the product, therefore are not considered "insurance" within the purview of the California Insurance Code. This interpretation allows these contracts to be administered by the Department of Consumer Affairs.

000120

Item 8 Page 15

00849

MJN/855

Document received by the CA 4th District Court of Appeal Division 2.



**Assembly Republican Bill Analysis**

**AB 2704 (Alquist)**

5. BEAR currently registers third-party obligors on contracts sold by major retailers (Circuit City, Good Guys, Wards, Radio Shack) where the obligor has an exclusive relationship with one retailer. Apparently there are certain business and tax advantages for these large retailers to have a third party be the obligor on the service

contracts they sell. BEAR sees no erosion of consumer protection by this proposal as long as the company ultimately responsible for fulfilling the contract can meet the fiscal requirements of registration.

**Policy Consultant: Peter Renevitz 4/27/98**

**Fiscal Consultant:**

000121

00856

**MJN/856**

Document received by the CA 4th District Court of Appeal Division 2.

Date of Hearing: May 5, 1998

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,  
GOVERNMENTAL EFFICIENCY, AND ECONOMIC DEVELOPMENT  
Susan Davis, Chair

AB 2704 (Alquist) - As Introduced: February 23, 1998

SUBJECT: Specifies that a obligor under certain service contracts shall be subject to regulation by the Bureau of Electronic and Appliance Repair

SUMMARY: Revises the definition of a "service contract seller" that is regulated by the Bureau of Electronic and Appliance Repair (BEAR) to include any person who is the "obligor" under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

In other words, the measure provides that an obligor of the specified service contracts shall be deemed to be a "service contract seller" and shall be subject to regulation by BEAR.

UNDER EXISTING LAW, the definition of a service contract seller is limited to a person who sells or offers to sell a specified service contract. Existing law also:

- 1) Establishes the Electronics and Appliance Repair Dealer Registration Law, administered by BEAR within the Department of Consumer Affairs; this law:
  - a) requires the registration and regulation of service dealers who perform electronic equipment and appliance repairs;
  - b) requires the registration and regulation of service contract sellers and administrators, as defined, for service contracts relating to the maintenance and repair of appliances and electronic sets including televisions, radios, computer systems, etc.;
  - c) specifies certain financial solvency requirements for these regulated entities (e.g., obtaining service contract reimbursement insurance, specified minimum net worth amounts, etc.); and
  - d) specifies that the service contracts sold must meet the requirements of the Song-Beverly Consumer Warranty Act including contract form, contents, disclosures, and refunds of premiums under certain conditions.
- 2) Provides for the licensure and regulation by the Department of Insurance of certain home protection companies and contracts that effectively insure a homeowner against repair or replacement of among other things, home appliances. Service contracts sold by a home builder or seller or manufacturer of the home or appliance are specifically exempted from DOI regulation under these provisions.

FISCAL EFFECT: Unknown potential additional costs to BEAR to regulate the newly defined group of service contract sellers, to the extent this group is not already within BEAR regulation. However, this bill is designated as non-fiscal and will not be referred to the Appropriations Committee.

000122

0085

MJN/857

Document received by the CA 4th District Court of Appeal Division 2.

COMMENTS:1) Purpose of the Measure

According to the author's office, the purpose of this measure is to "clarify" the treatment of third party obligors under service contracts. Specifically, if a retailer sells a product, say a radio, and as part of that sale the retailer also sells the purchaser a service repair contract on behalf of a third party (other than the manufacturer) to repair the radio, that third party would be deemed to be a "service contract seller" for purposes of regulation. The effect of this change is make certain that third party obligors are subject to regulation under the BEAR. Proponents maintain that this is consistent with the existing practice of the BEAR.

The BEAR currently regulates approximately 2,700 service contract sellers and 24 service contract administrators. The Department of Insurance regulates 15 home protection contract companies.

2) Should Third Party Obligors be Regulated by the BEAR or by the Department of Insurance?

It can be argued that a contract which obligates a third party to cover repair or replacement costs is an insurance product because purchasers of the contracts pay money in exchange for a promise that another party will pay for a loss caused by a contingent future event.

The author's office has asked Legislative Counsel for an opinion as to whether or not "service contract sellers" within the context of Business and Professions Code Section 9855 (which this measure amends) should be subject to regulation by the Department of Insurance.

Legislative Counsel opines that service contract sellers should not be subject to regulation by the Department of Insurance. Generally, counsel states that "since a service contract, as defined in subdivision (a) of Section 9855, is a contract to perform services related to the maintenance or repair of an electronic set or appliances, as defined, the contract is not insurance in the traditional sense in which the insured bears the risk of personal liability for services ..."

3) Consumer Affairs Requests Clarifying Amendments

The Department of Consumer Affairs has requested an amendment to the bill which clarifies the definition of "obligor." As currently drafted in this bill, and as used in existing law, the term obligor is not specifically defined. BEAR is concerned that in the absence of a specific definition, it may be possible for entities other than those which BEAR currently has within its jurisdiction to qualify as an obligor.

The BEAR has provided proposed amendment language which would clarify the definition of obligor, consistent with its existing practices.

000123

0085

MJN/858

Document received by the CA 4th District Court of Appeal Division 2.

REGISTERED SUPPORT / OPPOSITION:

Support

Circuit City Stores, Inc. (sponsor)  
California Retailers Association

Opposition

None on file

Analysis prepared by: Andrew Meyers / aconpro / (916) 319-2089

000124

0085

**MJN/859**

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0085

**MJN/860**

document received by the CA 4th District Court of Appeal Division 2.

AMENDED IN ASSEMBLY MAY 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2704**

Introduced by Assembly Member Alquist

February 23, 1998

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, as amended, Alquist. Service contracts:

Existing law regulating the activities of service contractors, including service contract sellers, defines a service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, as defined. Existing law regulating consumer warranties provides for substantially the same definition of a "service contract seller" with respect to the maintenance or repair of consumer products, as defined.

This bill would add to the definition of "service contract seller" or "seller," for purposes of both regulatory laws, a person who is the obligor, *as defined*, under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

000125

00852

**MJN/861**



*The people of the State of California do enact as follows:*

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a set or appliance as defined by this chapter.

(b) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

- (1) Providing service contract sellers with service contract forms.
- (2) Participating in the adjustment of claims arising from service contracts.
- (3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract.

(c) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

(e) "Service contractor" means a service contract administrator or a service contract seller.

(f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) "Obligor" is the entity financially and legally obligated under the terms of a service contract. An obligor may be one of the following:

(1) A retailer who sells both the equipment and the contract to the consumer.

(2) A manufacturer who manufactures the equipment and either sells the contract directly to the consumer or through a retailer.

(3) A service dealer who performs, or while remaining responsible, arranges for the performance of service on the equipment and either sells the contract directly to the consumer or through a retailer.

(4) A third-party obligor, who is either an affiliate of the retailer, manufacturer, or service dealer selling the contract, or an affiliate of the insurance company that provides the service contract reimbursement insurance policy that covers contracts sold by the retailer, manufacturer, or service dealer. The third-party obligor shall only be financially or legally obligated for a single retailer, manufacturer, or service dealer.

SEC. 2. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the

000126

1 business of manufacturing, distributing, or selling  
 2 consumer goods at retail. As used in this subdivision,  
 3 "person" means any individual, partnership, corporation,  
 4 limited liability company, association, or other legal  
 5 entity that engages in any such business.

6 (c) "Clothing" means any wearing apparel, worn for  
 7 any purpose, including under and outer garments, shoes,  
 8 and accessories composed primarily of woven material,  
 9 natural or synthetic yarn, fiber, or leather or similar  
 10 fabric.

11 (d) "Consumables" means any product that is  
 12 intended for consumption by individuals, or use by  
 13 individuals for purposes of personal care or in the  
 14 performance of services ordinarily rendered within the  
 15 household, and that usually is consumed or expended in  
 16 the course of consumption or use.

17 (e) "Distributor" means any individual, partnership,  
 18 corporation, association, or other legal relationship that  
 19 stands between the manufacturer and the retail seller in  
 20 purchases, consignments, or contracts for sale of  
 21 consumer goods.

22 (f) "Independent repair or service facility" or  
 23 "independent service dealer" means any individual,  
 24 partnership, corporation, association, or other legal  
 25 entity, not an employee or subsidiary of a manufacturer  
 26 or distributor, that engages in the business of servicing  
 27 and repairing consumer goods.

28 (g) "Lease" means any contract for the lease or  
 29 bailment for the use of consumer goods by an individual,  
 30 for a term exceeding four months, primarily for personal,  
 31 family, or household purposes, whether or not it is agreed  
 32 that the lessee bears the risk of the consumer goods'  
 33 depreciation.

34 (h) "Lessee" means an individual who leases  
 35 consumer goods under a lease.

36 (i) "Lessor" means a person who regularly leases  
 37 consumer goods under a lease.

38 (j) "Manufacturer" means any individual,  
 39 partnership, corporation, association, or other legal

1 relationship that manufactures, assembles, or produces  
 2 consumer goods.

3 (k) "Place of business" means, for the purposes of any  
 4 retail seller that sells consumer goods by catalog or mail  
 5 order, the distribution point for these goods.

6 (l) "Retail seller," "seller," or "retailer" means any  
 7 individual, partnership, corporation, association, or other  
 8 legal relationship that engages in the business of selling or  
 9 leasing consumer goods to retail buyers.

10 (m) "Return to the retail seller" means, for the  
 11 purposes of any retail seller that sells consumer goods by  
 12 catalog or mail order, the retail seller's place of business,  
 13 as defined in subdivision (k).

14 (n) "Sale" means (1) the passing of title from the seller  
 15 to the buyer for a price, or (2) a consignment for sale.

16 (o) "Service contract" means a contract in writing to  
 17 perform, for an additional cost, over a fixed period of time  
 18 or for a specified duration, services relating to the  
 19 maintenance or repair of a consumer product, except that  
 20 this term does not include a policy of automobile  
 21 insurance, as defined in Section 116 of the Insurance  
 22 Code.

23 (p) "Service contract administrator" or  
 24 "administrator" means a person, other than a service  
 25 contract seller or an insurer admitted to do business in  
 26 this state, who performs or arranges, or has an affiliate  
 27 who performs or arranges, the collection, maintenance,  
 28 or disbursement of moneys to compensate any party for  
 29 claims or repairs pursuant to a service contract, and who  
 30 also performs or arranges, or has an affiliate who performs  
 31 or arranges, any of the following activities on behalf of  
 32 service contract sellers:

33 (1) Providing service contract sellers with service  
 34 contract forms.

35 (2) Participating in the adjustment of claims arising  
 36 from service contracts.

37 (3) Arranging on behalf of service contract sellers the  
 38 insurance required by Section 9855.2. A service contract  
 39 administrator shall not be an obligor on a service contract.

000127

1 (q) "Service contract seller" or "seller" means a  
2 person who sells or offers to sell a service contract to a  
3 service contractholder, including a person who is the  
4 obligor under a service contract sold by the seller,  
5 manufacturer, or repairer of the product covered by the  
6 service contract.

7 (r) "Service contractor" means a service contract  
8 administrator or a service contract seller.

9 (s) "Assistive device" means any instrument,  
10 apparatus, or contrivance, including any component or  
11 part thereof or accessory thereto, that is used or intended  
12 to be used, to assist an individual with a disability in the  
13 mitigation or treatment of an injury or disease or to assist  
14 or affect or replace the structure or any function of the  
15 body of an individual with a disability, except that this  
16 term does not include prescriptive lenses and other  
17 ophthalmic goods unless they are sold or dispensed to a  
18 blind person, as defined in Section 19153 of the Welfare  
19 and Institutions Code, and unless they are intended to  
20 assist the limited vision of the person so disabled.

21 (t) "Catalog or similar sale" means a sale in which  
22 neither the seller nor any employee or agent of the seller  
23 nor any person related to the seller nor any person with  
24 a financial interest in the sale participates in the diagnosis  
25 of the buyer's condition or in the selection or fitting of the  
26 device.

27 (u) "Home appliance" means any refrigerator,  
28 freezer, range, microwave oven, washer, dryer,  
29 dishwasher, garbage disposal, trash compactor, or room  
30 air-conditioner normally used or sold for personal, family,  
31 or household purposes.

32 (v) "Home electronic product" means any television,  
33 radio, antenna rotator, audio or video recorder or  
34 playback equipment, video camera, video game, video  
35 monitor, computer equipment, telephone,  
36 telecommunications equipment, electronic alarm  
37 system, electronic appliance control system, or other kind  
38 of electronic product, if it is normally used or sold for  
39 personal, family, or household purposes. The term  
40 includes any electronic accessory that is normally used or

1 sold with a home electronic product for one of those  
2 purposes. The term excludes any single product with a  
3 wholesale price to the retail seller of less than fifty dollars  
4 (\$50).

5 (w) "Obligor" is the entity financially and legally  
6 obligated under the terms of a service contract. An  
7 obligor may be one of the following:

8 (1) A retailer who sells both the consumer product and  
9 the contract to the consumer.

10 (2) A manufacturer who manufactures the consumer  
11 product and either sells the contract directly to the  
12 consumer or through a retailer.

13 (3) A service dealer who performs, or while remaining  
14 responsible, arranges for the performance of service on  
15 the consumer product and either sells the contract  
16 directly to the consumer or through a retailer.

17 (4) A third-party obligor, who is either an affiliate of  
18 the retailer, manufacturer, or service dealer selling the  
19 contract, or an affiliate of the insurance company that  
20 provides the service contract reimbursement insurance  
21 policy that covers contracts sold by the retailer,  
22 manufacturer, or service dealer. The third-party obligor  
23 shall only be financially or legally obligated for a single  
24 retailer, manufacturer, or service dealer.

25 This section shall remain in effect only until January 1,  
26 2003, and as of that date is repealed, unless a later enacted  
27 statute, that is enacted before January 1, 2003, deletes or  
28 extends that date.

ASSEMBLY THIRD READING  
AB 2704 (Alquist)  
As Amended May 12, 1998  
Majority vote

CONSUMER PROTECTION 11-0

---

Ayes: Davis, Morrissey, Alquist,  
Cedillo, Figueroa, Frusetta,  
Machado, Napolitano, Strom-Martin,  
Takasugi, Wildman

SUMMARY: Revises the definition of a "service contract seller" that is regulated by the Bureau of Electronic and Appliance Repair (BEAR) to include any person who is the "obligor" under a service contract sold by the seller, manufacturer or repairer of the product covered by the service contract. Requires that an obligor, as defined, of the specified service contracts, be deemed to be a "service contract seller" and be subject to regulation by BEAR.

UNDER EXISTING LAW, the definition of a service contract seller is limited to a person who sells or offers to sell a specified service contract. Specifically, existing law:

- 1) Establishes the Electronics and Appliance Repair Dealer Registration Law, administered by BEAR within the Department of Consumer Affairs (DCA); this law:
  - a) Requires the registration and regulation of service dealers who perform electronic equipment and appliance repairs;
  - b) Requires the registration and regulation of service contract sellers and administrators, as defined, for service contracts relating to the maintenance and repair of appliances and electronic sets including televisions, radios and computer systems.
  - c) Specifies certain financial solvency requirements for these regulated entities (e.g., obtaining service contract reimbursement insurance, specified minimum net worth amounts); and
  - d) Specifies that the service contracts sold must meet the requirements of the Song-Beverly Consumer Warranty Act including contract form, contents, disclosures and refunds of premiums under certain conditions.
- 2) Provides for the licensure and regulation by the Department of Insurance (DOI) of certain home protection companies and contracts that effectively insure a homeowner against repair or replacement of among other things, home appliances. Service contracts sold by a home builder or seller or manufacturer of the home or appliance are specifically exempted from DOI regulation under these provisions.

FISCAL EFFECT: Unknown potential additional costs to BEAR to regulate the newly defined group of service contract sellers, to the extent this group is not already within BEAR regulation.

COMMENTS:

- 1) According to the author's office, the purpose of this measure is to

000129

00859

MJN/865

Document Received by the CA 4th District Court of Appeal Division 2.

"clarify" the treatment of third party obligors under service contracts. Specifically, if a retailer sells a product, say a radio, and as part of that sale the retailer also sells the purchaser a service repair contract on behalf of a third party (i.e., other than the manufacturer) to repair the radio, that third party would be deemed to be a "service contract seller" for purposes of regulation. The effect of this change is make certain that third party obligors are subject to regulation under BEAR. Proponents maintain that this is consistent with the existing practice of BEAR.

BEAR currently regulates approximately 2,700 service contract sellers and 24 service contract administrators. DOI regulates 15 home protection contract companies.

- 2) DCA requested an amendment to this bill to clarify the definition of "obligor." The most recent amendments to the bill provide that definition. With this amendment, it appears that the measure's provisions are consistent with the existing practices of BEAR.

Analysis prepared by: Andrew Meyers / aconpro / (916) 319-2089

FN 038323

000130

00866

**MJN/866**

Document received by the CA 4th District Court of Appeal Division 2.



## STATE AND CONSUMER SERVICES AGENCY

## SUMMARY ANALYSIS OF AMENDED BILL

Department CONSUMER AFFAIRS	Author Alquist	Bill Number AB 2704
Sponsor California Retailers Association	Related Bills SB 2075	Amended Date 5/12/98
Analyst: Weber, Dennis	Telephone 324-5402	
Subject: Service Contracts		

XX DEPARTMENT'S AMENDMENTS ACCEPTED. Amendments reflect suggestions of analysis for the 2-23-98 version.

     AMENDMENTS HAVE A FISCAL IMPACT. A new fiscal analysis is provided.

XX AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the analysis for the 2-23-98 version.

XX MORE AMENDMENTS NECESSARY - See comments below.

     DEPARTMENT RECOMMENDS POSITION BE CHANGED TO                     .

     REMAINDER OF ANALYSIS FOR                      VERSION STILL APPLIES.

     OTHER - See comments below.

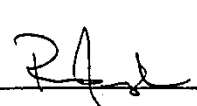
## SUMMARY:

The Department of Consumer Affairs Bureau of Electronic and Appliance Repair (BEAR) regulates service contract sellers. AB 2704 would add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

Amendments of May 12, 1998 which define an "obligor" are those proposed by the Department. However, the sponsor changed one key phrase in the amendments which the Department's legal staff indicates was significant. The Department proposed amendments that defined a third-party obligor as a "wholly-owned subsidiary of a retailer." Amendments changed that phrase to "an affiliate of a retailer." Department legal counsel opines that "affiliate" has no legal standing and is vague.

The Department has expressed its concerns to the sponsor and is working with legal counsel from the Department and the sponsor to find mutually agreeable language. The Department continues to recommend a NEUTRAL IF AMENDED position on AB 2704. Proposed amendments will be forwarded when prepared.

## DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE / /		GOVERNOR'S APPOINTMENT / /		
DEPARTMENT DIRECTOR POSITION <u>    </u> S <u>    </u> O <u>    </u> SIA <u>    </u> OUA <u>    </u> N <u>    </u> NP <u>XX</u> NIA <u>    </u> NAR <u>    </u> DEFER TO <u>                    </u>		AGENCY SECRETARY POSITION <u>    </u> S <u>    </u> O <u>    </u> SIA <u>    </u> OUA <u>    </u> N <u>    </u> NP <u>X</u> NIA <u>    </u> NAR <u>    </u> DEFER TO <u>                    </u>		GOVERNOR'S OFFICE USE POSITION APPROVD. <u>                    </u> POSITION DISAPP. <u>                    </u> POSITION NOTED <u>                    </u> BY: <u>                    </u> DATE: <u>                    </u>
DEPARTMENT DIRECTOR	DATE:	AGENCY SECRETARY	DATE:	
	5/18/98	Original ANNE SHEEHAN	MAY 22 1998	

000131

0086

MJN/867

Document received by the CA 4th District Court of Appeal Division 2.



**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00868  
document received by the CA 4th District Court of Appeal Division 2.

**MJN/868**

AMENDED IN SENATE JUNE 17, 1998  
AMENDED IN ASSEMBLY MAY 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2704**

Introduced by Assembly Member Alquist  
(Coauthor: Senator Watson)

February 23, 1998

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, as amended, Alquist. Service contracts.

Existing law regulating the activities of service contractors, including service contract sellers, defines a service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, as defined. Existing law regulating consumer warranties provides for substantially the same definition of a "service contract seller" with respect to the maintenance or repair of consumer products, as defined.

This bill would add to the definition of "service contract seller" or "seller," for purposes of both regulatory laws, a person who is the obligor, as defined, under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

000132

00869

**MJN/869**

4th District Chapter 2, Article 1, Section 2

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9855 of the Business and  
2 Professions Code is amended to read:

3 9855. The definitions used in this section shall govern  
4 the construction and terms as used in this chapter:

5 (a) "Service contract" means a contract in writing to  
6 perform, over a fixed period of time or for a specified  
7 duration, services relating to the maintenance or repair  
8 of a set or appliance as defined by this chapter.

9 (b) "Service contract administrator" or  
10 "administrator" means a person, other than a service  
11 contract seller or an insurer admitted to do business in  
12 this state, who performs or arranges, or has an affiliate  
13 who performs or arranges, the collection, maintenance,  
14 or disbursement of moneys to compensate any party for  
15 claims or repairs pursuant to a service contract, and who  
16 also performs or arranges, or has an affiliate who performs  
17 or arranges, any of the following activities on behalf of  
18 service contract sellers:

19 (1) Providing service contract sellers with service  
20 contract forms.

21 (2) Participating in the adjustment of claims arising  
22 from service contracts.

23 (3) Arranging on behalf of service contract sellers the  
24 insurance required by Section 9855.2.

25 A service contract administrator shall not be an obligor  
26 on a service contract.

27 (c) "Service contract seller" or "seller" means a  
28 person who sells or offers to sell a service contract to a  
29 service contractholder, including a person who is the  
30 obligor under a service contract sold by the seller,  
31 manufacturer, or repairer of the product covered by the  
32 service contract.

33 (d) "Service contractholder" means a person who  
34 purchases or receives a service contract from a service  
35 contract seller.

1 (e) "Service contractor" means a service contract  
2 administrator or a service contract seller.

3 (f) "Service contract reimbursement insurance  
4 policy" means a policy of insurance issued by an insurer  
5 admitted to do business in this state providing coverage  
6 for all obligations and liabilities incurred by a service  
7 contract seller under the terms of the service contracts  
8 sold in this state by the service contract seller to a service  
9 contractholder. The service contract reimbursement  
10 insurance policy shall either cover all service contracts  
11 sold or specifically cover those contracts sold to residents  
12 of the State of California.

13 (g) "Obligor" is the entity financially and legally  
14 obligated under the terms of a service contract. An  
15 obligor may be one of the following:

16 (1) A retailer who sells both the equipment and the  
17 contract to the consumer.

18 (2) A manufacturer who manufactures the equipment  
19 and either sells the contract directly to the consumer or  
20 through a retailer.

21 (3) A service dealer who performs, or while remaining  
22 responsible, arranges for the performance of service on  
23 the equipment and either sells the contract directly to the  
24 consumer or through a retailer.

25 (4) A third-party obligor, who is either an affiliate of  
26 the retailer, manufacturer, or service dealer selling the  
27 contract, or an affiliate of the insurance company that  
28 provides the service contract reimbursement insurance  
29 policy that covers contracts sold by the retailer,  
30 manufacturer, or service dealer. The third-party obligor  
31 shall only be financially or legally obligated for a single  
32 retailer, manufacturer, or service dealer.

33 SEC. 2. Section 1791 of the Civil Code is amended to  
34 read:

35 1791. As used in this chapter:

36 (a) "Consumer goods" means any new product or part  
37 thereof that is used, bought, or leased for use primarily for  
38 personal, family, or household purposes, except for  
39 clothing and consumables. "Consumer goods" shall  
40 include new and used assistive devices sold at retail.

000133

1 (b) "Buyer" or "retail buyer" means any individual  
 2 who buys consumer goods from a person engaged in the  
 3 business of manufacturing, distributing, or selling  
 4 consumer goods at retail. As used in this subdivision,  
 5 "person" means any individual, partnership, corporation,  
 6 limited liability company, association, or other legal  
 7 entity that engages in any such business.

8 (c) "Clothing" means any wearing apparel, worn for  
 9 any purpose, including under and outer garments, shoes,  
 10 and accessories composed primarily of woven material,  
 11 natural or synthetic yarn, fiber, or leather or similar  
 12 fabric.

13 (d) "Consumables" means any product that is  
 14 intended for consumption by individuals, or use by  
 15 individuals for purposes of personal care or in the  
 16 performance of services ordinarily rendered within the  
 17 household, and that usually is consumed or expended in  
 18 the course of consumption or use.

19 (e) "Distributor" means any individual, partnership,  
 20 corporation, association, or other legal relationship that  
 21 stands between the manufacturer and the retail seller in  
 22 purchases, consignments, or contracts for sale of  
 23 consumer goods.

24 (f) "Independent repair or service facility" or  
 25 "independent service dealer" means any individual,  
 26 partnership, corporation, association, or other legal  
 27 entity, not an employee or subsidiary of a manufacturer  
 28 or distributor, that engages in the business of servicing  
 29 and repairing consumer goods.

30 (g) "Lease" means any contract for the lease or  
 31 bailment for the use of consumer goods by an individual,  
 32 for a term exceeding four months, primarily for personal,  
 33 family, or household purposes, whether or not it is agreed  
 34 that the lessee bears the risk of the consumer goods'  
 35 depreciation.

36 (h) "Lessee" means an individual who leases  
 37 consumer goods under a lease.

38 (i) "Lessor" means a person who regularly leases  
 39 consumer goods under a lease.

1 (j) "Manufacturer" means any individual,  
 2 partnership, corporation, association, or other legal  
 3 relationship that manufactures, assembles, or produces  
 4 consumer goods.

5 (k) "Place of business" means, for the purposes of any  
 6 retail seller that sells consumer goods by catalog or mail  
 7 order, the distribution point for these goods.

8 (l) "Retail seller," "seller," or "retailer" means any  
 9 individual, partnership, corporation, association, or other  
 10 legal relationship that engages in the business of selling or  
 11 leasing consumer goods to retail buyers.

12 (m) "Return to the retail seller" means, for the  
 13 purposes of any retail seller that sells consumer goods by  
 14 catalog or mail order, the retail seller's place of business,  
 15 as defined in subdivision (k).

16 (n) "Sale" means (1) the passing of title from the seller  
 17 to the buyer for a price, or (2) a consignment for sale.

18 (o) "Service contract" means a contract in writing to  
 19 perform, for an additional cost, over a fixed period of time  
 20 or for a specified duration, services relating to the  
 21 maintenance or repair of a consumer product, except that  
 22 this term does not include a policy of automobile  
 23 insurance, as defined in Section 116 of the Insurance  
 24 Code.

25 (p) "Service contract administrator" or  
 26 "administrator" means a person, other than a service  
 27 contract seller or an insurer admitted to do business in  
 28 this state, who performs or arranges, or has an affiliate  
 29 who performs or arranges, the collection, maintenance,  
 30 or disbursement of moneys to compensate any party for  
 31 claims or repairs pursuant to a service contract, and who  
 32 also performs or arranges, or has an affiliate who performs  
 33 or arranges, any of the following activities on behalf of  
 34 service contract sellers:

35 (1) Providing service contract sellers with service  
 36 contract forms.

37 (2) Participating in the adjustment of claims arising  
 38 from service contracts.

000134

1 (3) Arranging on behalf of service contract sellers the  
2 insurance required by Section 9855.2. A service contract  
3 administrator shall not be an obligor on a service contract.  
4 (q) "Service contract seller" or "seller" means a  
5 person who sells or offers to sell a service contract to a  
6 service contract holder, including a person who is the  
7 obligor under a service contract sold by the seller,  
8 manufacturer, or repairer of the product covered by the  
9 service contract.

10 (r) "Service contractor" means a service contract  
11 administrator or a service contract seller.

12 (s) "Assistive device" means any instrument,  
13 apparatus, or contrivance, including any component or  
14 part thereof or accessory thereto, that is used or intended  
15 to be used, to assist an individual with a disability in the  
16 mitigation or treatment of an injury or disease or to assist  
17 or affect or replace the structure or any function of the  
18 body of an individual with a disability, except that this  
19 term does not include prescriptive lenses and other  
20 ophthalmic goods unless they are sold or dispensed to a  
21 blind person, as defined in Section 19153 of the Welfare  
22 and Institutions Code, and unless they are intended to  
23 assist the limited vision of the person so disabled.

24 (t) "Catalog or similar sale" means a sale in which  
25 neither the seller nor any employee or agent of the seller  
26 nor any person related to the seller nor any person with  
27 a financial interest in the sale participates in the diagnosis  
28 of the buyer's condition or in the selection or fitting of the  
29 device.

30 (u) "Home appliance" means any refrigerator,  
31 freezer, range, microwave oven, washer, dryer,  
32 dishwasher, garbage disposal, trash compactor, or room  
33 air-conditioner normally used or sold for personal, family,  
34 or household purposes.

35 (v) "Home electronic product" means any television,  
36 radio, antenna rotator, audio or video recorder or  
37 playback equipment, video camera, video game, video  
38 monitor, computer equipment, telephone,  
39 telecommunications equipment, electronic alarm  
40 system, electronic appliance control system, or other kind

1 of electronic product, if it is normally used or sold for  
2 personal, family, or household purposes. The term  
3 includes any electronic accessory that is normally used or  
4 sold with a home electronic product for one of those  
5 purposes. The term excludes any single product with a  
6 wholesale price to the retail seller of less than fifty dollars  
7 (\$50).

8 (w) "Obligor" is the entity financially and legally  
9 obligated under the terms of a service contract. An  
10 obligor may be one of the following:

11 (1) A retailer who sells both the consumer product and  
12 the contract to the consumer.

13 (2) A manufacturer who manufactures the consumer  
14 product and either sells the contract directly to the  
15 consumer or through a retailer.

16 (3) A service dealer who performs, or while remaining  
17 responsible, arranges for the performance of service on  
18 the consumer product and either sells the contract  
19 directly to the consumer or through a retailer.

20 (4) A third-party obligor, who is either an affiliate of  
21 the retailer, manufacturer, or service dealer selling the  
22 contract, or an affiliate of the insurance company that  
23 provides the service contract reimbursement insurance  
24 policy that covers contracts sold by the retailer,  
25 manufacturer, or service dealer. The third-party obligor  
26 shall only be financially or legally obligated for a single  
27 retailer, manufacturer, or service dealer.

28 This section shall remain in effect only until January 1,  
29 2003, and as of that date is repealed, unless a later enacted  
30 statute, that is enacted before January 1, 2003, deletes or  
31 extends that date.

000135

**SENATE COMMITTEE ON  
BUSINESS AND PROFESSIONS  
Senator Richard G. Polanco, Chairman**

**BILL NO: AB 2704  
AUTHOR: Alquist  
As Amended: 6/17/98**

**HEARING DATE: June 22, 1998**

**FISCAL: No**

**SUBJECT:** Service contracts: specifically subjecting the "obligor" on service contracts to regulation by the Bureau of Electronic and Appliance Repair and the Song-Beverly Consumer Warranty Act.

**DIGEST:**

**Existing law:**

1. Provides for the regulation of consumer warranties, including service contracts on consumer goods, under the provisions of the Song-Beverly Consumer Warranty Act in the Civil Code, and specifies various requirements on those who sell those contracts, including contract form, contents, disclosures, refunds of premiums under certain conditions, and consumer legal remedies for damages suffered by consumers as a result of a failure to comply with any obligations imposed by the Act.
2. Provides for the registration and regulation of service dealers who perform electronic equipment and appliance repair, and of service contract sellers and administrators, as defined, by the Bureau of Electronic and Appliance Repair (BEAR) of the Department of Consumer Affairs pursuant to provisions of the Electronics and Appliance Repair Dealer Registration Law in the Business and Professions Code.
3. Specifies certain financial solvency requirements for service contract sellers and administrators regulated by the BEAR (e.g., obtaining service contract reimbursement insurance, specified minimum net worth amounts, etc.), and requires that service contracts meet certain requirements of the Song-Beverly Act.
4. Defines "service contract seller" for purposes of the BEAR regulation as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, and defines "service contract seller"

000136

0086

**MJN/873**

Document received by the CA 4th District Court of Appeal Division 2.



similarly for purposes of the Song-Beverly Act's regulation of service contracts for consumer goods generally.

5. Provides for the licensure and regulation by the Department of Insurance of certain home protection companies and contracts that protect a homeowner against the cost of having to repair or replace, among other things, home appliances. Exempts from this regulation the builder of the home or the manufacturer of the appliance.

**This bill would:**

1. Revise the definitions of "service contract seller" for the purposes of both regulatory laws to specifically include an "obligor," as defined, under the service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.
2. Define "obligor" as the entity financially and legally obligated under the terms of the service contract.

**FISCAL EFFECT:**

Unknown. This is a "fiscal" bill. According to the Assembly Consumer Protection Committee (5/5/98), there would be unknown potential additional costs to the BEAR to regulate any additional third-party service contract obligors who will fall within the expanded definition of regulated service contract sellers and are not already regulated by the BEAR. The BEAR is currently authorized to collect an annual registration fee of \$75 from each service contractor to offset its administrative costs. However, provisions of SB 2075 (Polanco) would amend the law to permit the Director of the Department of Consumer Affairs to establish the registration fee for service contractors who are not also service dealers at a level sufficient to cover the costs of regulating those registrants.

**COMMENTS:**

**1. Sponsorship and Purpose.**

This bill is sponsored by the California Retailers Association and supported by Circuit City Stores, Inc. to clarify that third-party obligors under service contracts are regulated as service contract sellers by the Bureau of Auto Repair and also under the provisions of the Song-Beverly Consumer Warranty Act. Doing so,

000137

0086

**MJN/874**

Document received by the CA 4th District Court of Appeal Division 2.

according to the proponents, would be consistent with the BEAR's longtime practice and underscore its regulatory authority over obligors on such contracts.

## **2. Background.**

The BEAR currently regulates 2,717 service contract sellers and 24 service contract administrators who each pay an annual registration fee of \$75.

## **3. Similar or Related Legislation This Session.**

SB 2075 (Polanco) is another service contracts bill this year. That bill would provide that service contracts under which the seller of the contract is responsible for the maintenance or repair of an appliance or electronic product are subject to the regulation by the BEAR and exempt from regulation by the Department of Insurance - so long as they are not contracts offered by a builder of a home in conjunction with the sale of a home.

## **4. Technical Amendments.**

Both this bill and SB 2075 (Polanco), previously passed by this committee and now pending in the Assembly, would amend Section 9855 of the Business and Professions Code in different ways. The changes proposed by both bills appear to be compatible. Both bills should be amended to avoid a chaptering-out problem.

## **5. Assembly Votes.**

Assembly Consumer Protection Committee:	11 - 0 (5/5/98)
Assembly Floor:	72 - 1 (5/14/98)

## **SUPPORT AND OPPOSITION:**

Support: California Retailers Association (sponsor)  
Circuit City Stores, Inc.

Opposition: None received.

Consultant: Jay J. DeFuria

000138

00868

**MJN/875**

Document received by the CA 4th District Court of Appeal Division 2.

## STATE AND CONSUMER SERVICES AGENCY

## SUMMARY ANALYSIS OF AMENDED BILL

Department <b>CONSUMER AFFAIRS</b>	Author <b>Alquist</b>	Bill Number <b>AB 2704</b>
Sponsor <b>California Retailers Association</b>	Related Bills <b>SB 2075</b>	Amended Date <b>6/17/98</b>
Analyst: <b>Weber, Dennis</b>	Telephone <b>324-5402</b>	
Subject: <b>Service Contracts</b>		

XX DEPARTMENT'S AMENDMENTS ACCEPTED. Amendments reflect suggestions of analysis for the 5/12/98 version.

\_\_\_ AMENDMENTS HAVE A FISCAL IMPACT. A new fiscal analysis is provided.

\_\_\_ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the analysis for the \_\_\_\_\_ version.

\_\_\_ MORE AMENDMENTS NECESSARY - See comments below.

XX DEPARTMENT RECOMMENDS POSITION BE CHANGED TO NEUTRAL.

\_\_\_ REMAINDER OF ANALYSIS FOR \_\_\_\_\_ VERSION STILL APPLIES.

\_\_\_ OTHER - See comments below.

## SUMMARY:

## CHANGE OF POSITION

The Department of Consumer Affairs Bureau of Electronic and Appliance Repair (BEAR) regulates service contract sellers. AB 2704 would add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

Amendments of June 17, 1998 define an "obligor" as "the entity financially and legally obligated under the terms of the service contract." The Department previously proposed amendments that defined a third-party obligor as a "wholly-owned subsidiary of a retailer." Amendments of May 12, 1998 changed that phrase to "an affiliate of a retailer." Department legal counsel opines that "affiliate" had no legal standing and is vague.

The latest amendments are a compromise that would provide a general definition of "obligor" that would later be more specifically defined through a rulemaking process.

The Department recommends a change of position to **NEUTRAL** on AB 2704.

## DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE / /		GOVERNOR'S APPOINTMENT / /	
<b>DEPARTMENT DIRECTOR POSITION</b> ___ S ___ O ___ SIA ___ OUA <u>XX</u> N ___ NP ___ NIA ___ NAR ___ DEFER TO _____		<b>AGENCY SECRETARY POSITION</b> ___ S ___ O ___ SIA ___ OUA <u>✓</u> N ___ NP ___ NIA ___ NAR ___ DEFER TO _____	
		<b>GOVERNOR'S OFFICE USE</b> POSITION APPROVD. _____ POSITION DISAPP. _____ POSITION NOTED _____	
		BY: _____ DATE: _____	
<b>DEPARTMENT DIRECTOR</b> DATE: <u>6/22/98</u>		<b>ORIGINAL SIGNED BY</b> HAPPY CHASTAIN AGENCY SECRETARY DATE: <u>JUN 30 1998</u> DEPUTY SECRETARY LEGISLATION	

000139

00876

MJN/876

Document received by the CA 4th District Court of Appeal Division 2.

## MEMBERS

JRICE JOHANNESSEN  
 SE CHAIRMAN  
 BEN S. AYALA  
 LIAM A. CRAVEN  
 JOY GREENE  
 MID G. KELLEY  
 BARBARA LEE  
 K O'CONNELL  
 RSCHHEL ROSENTHAL

## California Legislature

SENATE COMMITTEE  
 ON  
 BUSINESS AND PROFESSIONS

STAFF DIRECTOR  
 DAVID R. PETERS

CONSULTANTS  
 JAY J. DEFURIA  
 MICHAEL V. ABBOTT  
 G.V. AYERS

ASSISTANT  
 PATRICIA L. HAWKINS



RICHARD G. POLANCO  
 CHAIRMAN

PLEASE Deliver ASAP

# Fax Cover Sheet

TO  
 Office

KAREN HATCHER  
 BEAR

fax #

(916) 327-5594

FROM

JAY DEFURIA

DATE

16/19/98

Pages (including cover)

9

Message

Proposed amendments to  
 AB 2704 (Hagquist)

Circuit City was approached by SEARs to  
 see if they could put in the attached  
 amendments.

Supposed to be technical/clarifying  
 or conforming to similar phrase and  
 definition of home electronic product  
 of 1791(v). Are these OK with you? DCA?  
 JAY

ROOM 2193, STATE CAPITOL, SACRAMENTO, CA 95814 • (916) 445-3435 • FAX (916) 324-0917

000140  
 0087

MJN/877

Document received by the CA 4th District Court of Appeal Division 2.

JUN 19 1998

AB 2704  
Proposed Amendments

**First Amendment**

On page 2, line 7, after the word "maintenance" insert ", replacement"

**Second Amendment**

On page 5, line 21, after the word "maintenance" insert ", replacement"

**Third Amendment**

On page 6, line 32 delete the word "or". On page 6, line 33 after "air-conditioner" add "or other kind of appliance product"

000141

00878

**MJN/878**

Document received by the CA 4th District Court of Appeal Division 2.

AMENDED IN SENATE JUNE 29, 1998  
AMENDED IN SENATE JUNE 17, 1998  
AMENDED IN ASSEMBLY MAY 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2704**

Introduced by Assembly Member Alquist  
(Coauthor: Senator Watson)

February 23, 1998

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, as amended, Alquist. Service contracts.

Existing law regulating the activities of service contractors, including service contract sellers, defines a service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, as defined. Existing law regulating consumer warranties provides for substantially the same definition of a "service contract seller" with respect to the maintenance or repair of consumer products, as defined. *Under existing law, a "service contract" is defined to relate to the maintenance or repair of consumer products.*

This bill would add to the definition of "service contract seller" or "seller," for purposes of both regulatory laws, a person who is the obligor, as defined, under a service contract.

00872

**MJN/879**

000142



sold by the seller, manufacturer, or repairer of the product covered by the service contract. *The bill also would revise the definition of "service contract" to include the replacement of consumer products. The bill also would revise the definition of "home appliance" for the provisions relating to consumer warranties to include any kind of appliance product.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

2 9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

3 (a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a set or appliance as defined by this chapter.

4 (b) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

5 (1) Providing service contract sellers with service contract forms.

6 (2) Participating in the adjustment of claims arising from service contracts.

7 (3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

8 A service contract administrator shall not be an obligor on a service contract.

9 (c) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a

1 service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

2 (d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

3 (e) "Service contractor" means a service contract administrator or a service contract seller.

4 (f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

5 (g) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

6 SEC. 2. Section 1791 of the Civil Code is amended to read:

7 1791. As used in this chapter:

8 (a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

9 (b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any such business.

10 (c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material.

1 natural or synthetic yarn, fiber, or leather or similar  
2 fabric.

3 (d) "Consumables" means any product that is  
4 intended for consumption by individuals, or use by  
5 individuals for purposes of personal care or in the  
6 performance of services ordinarily rendered within the  
7 household, and that usually is consumed or expended in  
8 the course of consumption or use.

9 (e) "Distributor" means any individual, partnership,  
10 corporation, association, or other legal relationship that  
11 stands between the manufacturer and the retail seller in  
12 purchases, consignments, or contracts for sale of  
13 consumer goods.

14 (f) "Independent repair or service facility" or  
15 "independent service dealer" means any individual,  
16 partnership, corporation, association, or other legal  
17 entity, not an employee or subsidiary of a manufacturer  
18 or distributor, that engages in the business of servicing  
19 and repairing consumer goods.

20 (g) "Lease" means any contract for the lease or  
21 bailment for the use of consumer goods by an individual,  
22 for a term exceeding four months, primarily for personal,  
23 family, or household purposes, whether or not it is agreed  
24 that the lessee bears the risk of the consumer goods'  
25 depreciation.

26 (h) "Lessee" means an individual who leases  
27 consumer goods under a lease.

28 (i) "Lessor" means a person who regularly leases  
29 consumer goods under a lease.

30 (j) "Manufacturer" means any individual,  
31 partnership, corporation, association, or other legal  
32 relationship that manufactures, assembles, or produces  
33 consumer goods.

34 (k) "Place of business" means, for the purposes of any  
35 retail seller that sells consumer goods by catalog or mail  
36 order, the distribution point for these goods.

37 (l) "Retail seller," "seller," or "retailer" means any  
38 individual, partnership, corporation, association, or other  
39 legal relationship that engages in the business of selling or  
40 leasing consumer goods to retail buyers.

1 (m) "Return to the retail seller" means, for the  
2 purposes of any retail seller that sells consumer goods by  
3 catalog or mail order, the retail seller's place of business,  
4 as defined in subdivision (k).

5 (n) "Sale" means (1) the passing of title from the seller  
6 to the buyer for a price, or (2) a consignment for sale.

7 (o) "Service contract" means a contract in writing to  
8 perform, for an additional cost, over a fixed period of time  
9 or for a specified duration, services relating to the  
10 maintenance, *replacement*, or repair of a consumer  
11 product, except that this term does not include a policy  
12 of automobile insurance, as defined in Section 116 of the  
13 Insurance Code.

14 (p) "Service contract administrator" or  
15 "administrator" means a person, other than a service  
16 contract seller or an insurer admitted to do business in  
17 this state, who performs or arranges, or has an affiliate  
18 who performs or arranges, the collection, maintenance,  
19 or disbursement of moneys to compensate any party for  
20 claims or repairs pursuant to a service contract, and who  
21 also performs or arranges, or has an affiliate who performs  
22 or arranges, any of the following activities on behalf of  
23 service contract sellers:

24 (1) Providing service contract sellers with service  
25 contract forms.

26 (2) Participating in the adjustment of claims arising  
27 from service contracts.

28 (3) Arranging on behalf of service contract sellers the  
29 insurance required by Section 9855.2. A service contract  
30 administrator shall not be an obligor on a service contract.

31 (q) "Service contract seller" or "seller" means  
32 person who sells or offers to sell a service contract to a  
33 service contractholder, including a person who is the  
34 obligor under a service contract sold by the seller,  
35 manufacturer, or repairer of the product covered by the  
36 service contract.

37 (r) "Service contractor" means a service contract  
38 administrator or a service contract seller.

39 (s) "Assistive device" means any instrument  
40 apparatus, or contrivance, including any component or

000144

1 part thereof or accessory thereto, that is used or intended  
 2 to be used, to assist an individual with a disability in the  
 3 mitigation or treatment of an injury or disease or to assist  
 4 or affect or replace the structure or any function of the  
 5 body of an individual with a disability, except that this  
 6 term does not include prescriptive lenses and other  
 7 ophthalmic goods unless they are sold or dispensed to a  
 8 blind person, as defined in Section 19153 of the Welfare  
 9 and Institutions Code, and unless they are intended to  
 10 assist the limited vision of the person so disabled.

11 (t) "Catalog or similar sale" means a sale in which  
 12 neither the seller nor any employee or agent of the seller  
 13 nor any person related to the seller nor any person with  
 14 a financial interest in the sale participates in the diagnosis  
 15 of the buyer's condition or in the selection or fitting of the  
 16 device.

17 (u) "Home appliance" means any refrigerator,  
 18 freezer, range, microwave oven, washer, dryer,  
 19 dishwasher, garbage disposal, trash compactor, ~~or room~~  
 20 ~~air-conditioner~~ room air-conditioner, or other kind of  
 21 appliance product normally used or sold for personal,  
 22 family, or household purposes.

23 (v) "Home electronic product" means any television,  
 24 radio, antenna rotator, audio or video recorder or  
 25 playback equipment, video camera, video game, video  
 26 monitor, computer equipment, telephone,  
 27 telecommunications equipment, electronic alarm  
 28 system, electronic appliance control system, or other kind  
 29 of electronic product, if it is normally used or sold for  
 30 personal, family, or household purposes. The term  
 31 includes any electronic accessory that is normally used or  
 32 sold with a home electronic product for one of those  
 33 purposes. The term excludes any single product with a  
 34 wholesale price to the retail seller of less than fifty dollars  
 35 (\$50).

36 (w) "Obligor" is the entity financially and legally  
 37 obligated under the terms of a service contract.

38 This section shall remain in effect only until January 1,  
 39 2003, and as of that date is repealed, unless a later enacted

000145

1 statute, that is enacted before January 1, 2003, deletes or  
 2 extends that date.

4th District Court of Appeal Division 2.

00876

MJN/882

**SENATE RULES COMMITTEE**

AB 2704

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

---

**CONSENT**

---

Bill No: AB 2704

Author: Alquist (D), et al

Amended: 6/29/98 in Senate

Vote: 21

---

SENATE BUSINESS & PROFESSIONS COMMITTEE: 5-0, 6/22/98

AYES: Johannessen, Kelley, O'Connell, Rosenthal, Polanco

NOT VOTING: Ayala, Greene

ASSEMBLY FLOOR: 72-1, 5/14/98 - See last page for vote

---

SUBJECT: Service contracts

SOURCE: California Retailers Association

---

DIGEST: This bill specifically subjects the "obligor" on service contracts to regulation by the Bureau of Electronic and Appliance Repair and the Song-Beverly Consumer Warranty Act, and revises the definition of "service contract" and "home appliance."

ANALYSIS: Existing law:

1. Provides for the regulation of consumer warranties, including service contracts on consumer goods, under the provisions of the Song-Beverly Consumer Warranty Act in the Civil Code, and specifies various requirements on those who sell those contracts, including contract form, contents, disclosures, refunds of premiums under certain conditions, and consumer legal remedies for damages suffered by consumers as a result of a failure to comply with any obligations imposed by the Act.

000146

CONTINUED

0087

**MJN/883**

Document received by the CA 4th District Court of Appeal Division 2.

2. Provides for the registration and regulation of service dealers who perform electronic equipment and appliance repair, and service contract sellers and administrators, as defined, by the Bureau of Electronic and Appliance Repair (BEAR) and the State Department of Consumer Affairs (DCA) pursuant to the provisions of the Electronics and Appliance Repair Dealer Registration Law in the Business and Professions Code.
3. Specifies certain financial solvency requirements for service contract sellers and administrators regulated by BEAR (e.g., obtaining service contract reimbursement insurance, specified minimum net work amounts, etc.), and requires that service contracts meet certain requirements of the Song-Beverly Act.
4. Defines "service contract seller" for purposes of the BEAR regulation as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets of appliances, defines "service contract seller" similarly for purposes of the Song-Beverly Act's regulation of service contracts for consumer goods generally, and defines "home appliance" to include refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air conditioner, normally used or sold for personal, family or household products.

This bill:

1. Revises the definitions of:
  - A. "service contract seller" for the purposes of both regulatory laws to specifically include an "obligor," as defined, under the service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract, and
  - B. "service contract" to include services relating to replacement, and
  - C. "home appliance" to include other kind of appliance product normally used or sold for personal, family or household purposes.
2. Defines "obligor" as the entity financially and legally obligated under the terms of the service contract.

000147

CONTINUED

0087

MJN/884

Document received by the CA 4th District Court of Appeal Division 2.

Comments

This bill is sponsored by Circuit City Stores, Inc. to clarify that third-party obligors under service contracts are regulated as service contract sellers by the Bureau of Auto Repair and also under the provisions of the Song-Beverly Consumer Warranty Act. Doing so, according to the sponsor, would be consistent with the BEAR's longtime practice and underscore its regulator authority over obligors on such contracts.

Background

The BEAR currently regulates 2,718 service contract sellers and 24 service contract administrators who each pay an annual registration fee of \$75.

Related Legislation

SB 2075 (Polanco), pending in Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee, is another service contracts bill this year. This bill would exempt service contracts offered or issued by a person or affiliate of a person whose business is regulated by the California Public Utilities Commission from regulation by the State Department of Insurance if certain conditions are met.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 6/29/98)

California Retailers Association (source)  
Circuit City Stores, Inc.

ASSEMBLY FLOOR:

AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley,

CONTINUED

000148

00879

MJN/885

Document received by the CA 4th District Court of Appeal Division 2.



Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson,  
Vincent, Washington, Wayne, Wildman, Woods, Villaraigosa

NOES: McClintock

NOT VOTING: Ashburn, Bustamante, Gallegos, Goldsmith, Kuykendall,  
Pacheco, Wright

CP:cm 6/26/98 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

000149

00886

**MJN/886**

Document received by the CA 4th District Court of Appeal Division 2.

CONCURRENCE IN SENATE AMENDMENTS  
AB 2704 (Alquist)  
As Amended June 29, 1998  
Majority vote

ASSEMBLY: 72-1 (May 14, 1998) SENATE: 38-0 (July 2, 1998)

Original Committee Reference: CONPRO

SUMMARY: Specifies that a obligor under certain service contracts shall be subject to regulation by the Bureau of Electronic and Appliance Repair (BEAR).

The Senate amendments:

- 1) Remove examples of the definition of obligor, which are more appropriately specified in regulation, and not in statute.
- 2) Make changes to the definitions of service contract and home appliance for purposes of either broadening their meaning to reflect current industry practices or conforming to definitions in other code sections.

UNDER EXISTING LAW, the definition of a service contract seller is limited to a person who sells or offers to sell a specified service contract. Specifically, existing law:

- 1) Establishes the Electronics and Appliance Repair Dealer Registration Law, administered by BEAR within the Department of Consumer Affairs (DCA); this law:
  - a) Requires the registration and regulation of service dealers who perform electronic equipment and appliance repairs;
  - b) Requires the registration and regulation of service contract sellers and administrators, as defined, for service contracts relating to the maintenance and repair of appliances and electronic sets including televisions, radios and computer systems.
  - c) Specifies certain financial solvency requirements for these regulated entities (e.g., obtaining service contract reimbursement insurance, specified minimum net worth amounts); and
  - d) Specifies that the service contracts sold must meet the requirements of the Song-Beverly Consumer Warranty Act including contract form, contents, disclosures and refunds of premiums under certain conditions.
- 2) Provides for the licensure and regulation by the Department of Insurance (DOI) of certain home protection companies and contracts that effectively insure a homeowner against repair or replacement of among other things, home appliances. Service contracts sold by a home builder or seller or manufacturer of the home or appliance are specifically exempted from DOI regulation under these provisions.

AS PASSED BY THE ASSEMBLY, this bill revised the definition of a "service contract seller" that is regulated by BEAR to include any person who is the "obligor" under a service contract sold by the seller, manufacturer or repairer of the product covered by the service contract. Required that an obligor, as defined, of the specified service contracts, be deemed to be a

000150  
0088

MJN/887

Document received by the CA 4th District Court of Appeal Division 2.

"service contract seller" and be subject to regulation by BEAR.

FISCAL EFFECT: Unknown potential additional costs to BEAR to regulate the newly defined group of service contract sellers, to the extent this group is not already within BEAR regulation.

COMMENTS:

- 1) According to the author's office, the purpose of this measure is to "clarify" the treatment of third party obligors under service contracts. Specifically, if a retailer sells a product, say a radio, and as part of that sale the retailer also sells the purchaser a service repair contract on behalf of a third party (i.e., other than the manufacturer) to repair the radio, that third party would be deemed to be a "service contract seller" for purposes of regulation. The effect of this change is make certain that third party obligors are subject to regulation under BEAR. Proponents maintain that this is consistent with the existing practice of BEAR.

BEAR currently regulates approximately 2,700 service contract sellers and 24 service contract administrators. DOI regulates 15 home protection contract companies.

- 2) BEAR requested an amendment to this bill to clarify the definition of "obligor." Assembly amendments to the bill provided that definition. With these amendment, it appears that the measure's provisions are consistent with the existing practices of BEAR.

Analysis prepared by: Andrew Meyers / aconpro / (916) 319-2089

FN 040148

000151

0088

MJN/888

Document received by the CA 4th District Court of Appeal Division 2.

DEPARTMENT  
Consumer AffairsAUTHOR  
AlquistBILL NUMBER  
AB 2704**Summary:**

The Department of Consumer Affairs Bureau of Electronic and Appliance Repair (BEAR) regulates service contract sellers. AB 2704 would add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract. The bill also makes minor changes to the Civil Code definitions of "service contract" and "home appliance."

**Bill Description:****Existing law:**

1. Regulates the activities of service contractors including service contract sellers. The law defines service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances.
2. Regulating consumer warranties defines service contract seller with respect to the maintenance or repair of consumer products.
3. The Civil Code defines "service contract" as a contract in writing to perform for a cost over a fixed period of time, services relating to the maintenance or repair of a consumer product.
4. Defines "home appliance" as any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air conditioner.

**This bill would:**

1. Add to the definition of a service contract seller or seller, in both the Business and Professions Code and the Civil Code, a person who is the third-party obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

Vote: **ASSEMBLY**

Floor:	Aye 69	No 1
Floor:	Aye 72	No 1
Policy Committee:	Aye 11	No 0
Fiscal Committee:	Aye N/A	No

RECOMMENDATION  
TO GOVERNOR:SIGN ☒ VETO

DEPARTMENT DIRECTOR:

DATE:

EBR 97

Vote: **SENATE**

Floor:	Aye 38	No
Policy Committee:	Aye 5	No
Fiscal Committee:	Aye N/A	No

DEFER TO OTHER  
AGENCY

AGENCY SECRETARY

DATE:

000152

0088

MJN/889

Document received by the California District Court of Appeal Division 2.

2. Define "obligor" in the Business and Professions Code and the Civil Code.
3. Add "replacement" to the services in the definition of "service contract."
4. Add "or other kind of appliance product" to the definition of "Home Appliance" in the Civil Code.

**Background:**

This bill is sponsored by the California Retailers Association to ensure that third-party obligors on service contracts are held to the same standard of accountability as the retailer or manufacturer that sells or administers the service contract.

**Other legislation**

SB 2075 (Polanco) - pending in Assembly Appropriations Committee also affects service contracts. This bill would exempt service contracts offered or issued by a person or an affiliate of a person whose business is regulated by the California Public Utilities Commission from regulation by the State Department of Insurance if certain conditions are met. The author intends for these service contracts to instead be regulated by the BEAR.

**Specific Findings:**

The BEAR indicates that this bill would essentially codify existing policy. The BEAR currently registers third-party obligors on contracts sold by major retailers (Circuit City, Good Guys, Wards, Radio Shack) where the obligor has an exclusive relationship with one retailer. Apparently there are certain business and tax advantages for these large retailers to have a third party be the obligor on the service contracts they sell. The BEAR sees no erosion of consumer protection by this proposal as long as the company ultimately responsible for fulfilling the contract can meet the fiscal requirements of registration.

The BEAR has determined that this policy is in the spirit of existing law which is intended to ensure that service contracts, sold to consumers, are backed by responsible companies with demonstrated financial means to ensure the contracts.

The BEAR estimates that there are less than 10 companies that fit the definition in this bill and would be required to be registered.

The Department of Insurance, in a letter dated June 14, 1996, has stated that service contracts with a third-party obligor are provided as a convenience to consumers and are incidental to the sale of the product, therefore are not considered "insurance" within the gambit of the California Insurance Code. This interpretation allows these contracts to be administered by the DCA.

This bill defines obligors as an entity financially and legally obligated under the terms of a service contract.

Amendments also amend the definition of service contract to indicate that it may be for the maintenance, repair or *replacement* of a consumer product. In an increasingly disposable

000153

0088

**MJN/890**

Document received by the 14th District Court of Appeals

marketplace, it is often more economical to replace a broken appliance than repair it. This change recognizes this option.

Additionally, the Civil Code definition of a home appliance is modified to include "any other kind of appliance" used or sold for personal, family or household purposes. This essentially conforms the Civil Code with the Business and Professions Code definition of "home appliance."

**Fiscal Impact:**

The BEAR estimates it would be required to register less than 10 obligors at \$75 a registration. The workload and revenue are projected to be minor.

**Support:**

California Retailers Association (sponsor)  
Circuit City

(Verified 7-9-98)

**Opposition:**

None on file.

(Verified 7-9-98)

**Arguments:**

**Pro:**

AB 2704 provides the same accountability for the ultimate provider of security on a service contract as the company that interfaces with the customer. The bill ensures that the obligor as a financial and legal obligation to fulfill the contract.

The bill modifies the definition of "service contract" to recognize that such contracts often offer replacement as an alternative to repair.

**Con:**

No opposition has been voiced.

**Explanation of "NO" Votes:**

The bill received a single no vote from Assembly Member McClintock. Neither the author nor the Republican Caucus could explain the lone opposition.

000154

0088

**MJN/891**

Document received by the CA 4th District Court of Appeal Division 2.



**Recommendation:**

The Department of Consumer Affairs recommends that the Governor SIGN AB 2704.

Prepared by: Dennis Weber, Analyst.

Office: 324-5402  
Home: 772-3775

Ray Saatjian, Deputy Director.

Office: 327-5196  
Home: 641-2166  
Pager: 948-0493  
Cellular: 600-2149

Happy Chastain, Deputy Secretary, Legislation.

Office: 653-3111  
Home: 443-1366  
Pager: 810-2768  
Cellular: 806-8134

000155

0088

**MJN/892**

Document received by the CA 4th District Court of Appeal Division 2.

SACRAMENTO ADDRESS  
STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 445-4253  
DISTRICT OFFICE  
275 SARATOGA AVENUE, #205  
SANTA CLARA, CA 95050  
(408) 296-1616  
E-MAIL ADDRESS  
assemblywoman.alquist@assembly.ca.gov  
APPOINTMENTS:  
SEISMIC SAFETY COMMISSION  
ELECTRONIC BENEFITS TRANSFER  
PROJECT

Assembly  
California Legislature

ELAINE ALQUIST

ASSEMBLYMEMBER, TWENTY-SECOND DISTRICT

Representing the communities of: Campbell, Cupertino, Los Altos,  
Mountain View, Palo Alto, Santa Clara, Saratoga, Sunnyvale,  
and West San Jose. THE HEART OF THE SILICON VALLEY

COMMITTEES:  
CHAIR, INFORMATION TECHNOLOGY  
CHAIR, SELECT COMMITTEE ON AGING  
CONSUMER PROTECTION, GOVERNMENTAL  
EFFICIENCY & ECONOMIC DEVELOPMENT  
EDUCATION  
HEALTH  
JOINT LEGISLATIVE SUNSET  
REVIEW COMMITTEE  
REVENUE & TAXATION  
SELECT COMMITTEE ON AEROSPACE  
SELECT COMMITTEE ON  
EDUCATION TECHNOLOGY



July 9, 1998

The Honorable Pete Wilson  
Governor  
State Capitol, First Floor  
Sacramento, CA 95814

Dear Governor Wilson,

I am writing to urge you to sign AB 2704, which passed off the Assembly Floor on a vote of 65-1.

This bill would secure consumer confidence by clarifying the law with regard to obligors under service contracts sold covering electronics and appliances to make it consistent with the current regulating practice of the Bureau of Electronic and Appliance Repair (BEAR). Specifically, the bill clarifies that obligors (those responsible for fulfilling the terms of a service contract) are regulated the same as service contract sellers. The bill also defines "obligor" for regulatory purposes. Finally, the bill, which amends the Business and Professions Code, also amends the civil Code governing warranties so that the two codes remain consistent.

With the absence of any opposition, this bill was on consent in the Senate and passed nearly unanimously off the Assembly Floor.

If you have any questions regarding this or any other matter, please feel free to contact me at any time. This is a good bill for consumers and I respectfully request your signature.

Sincerely,

*Elaine White Alquist*

Assemblywoman Elaine White Alquist  
22<sup>nd</sup> Assembly District

Printed on Recycled Paper

000156

0088

MJN/893

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

00889

**MJN/894**

document received by the CA 4th District Court of Appeal Division 2.

Assembly Bill No. 2704

CHAPTER 196

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

[Approved by Governor July 20, 1998. Filed with  
Secretary of State July 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2704, Alquist. Service contracts.

Existing law regulating the activities of service contractors, including service contract sellers, defines a service contract seller as a person who sells or offers to sell a service contract for the maintenance or repair of electronic sets or appliances, as defined. Existing law regulating consumer warranties provides for substantially the same definition of a "service contract seller" with respect to the maintenance or repair of consumer products, as defined. Under existing law, a "service contract" is defined to relate to the maintenance or repair of consumer products.

This bill would add to the definition of "service contract seller" or "seller," for purposes of both regulatory laws, a person who is the obligor, as defined, under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract. The bill also would revise the definition of "service contract" to include the replacement of consumer products. The bill also would revise the definition of "home appliance" for the provisions relating to consumer warranties to include any kind of appliance product.

*The people of the State of California do enact as follows:*

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a set or appliance as defined by this chapter.

(b) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or

000157

0088

MJN/895

disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

- (1) Providing service contract sellers with service contract forms.
- (2) Participating in the adjustment of claims arising from service contracts.

- (3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract.

(c) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

(e) "Service contractor" means a service contract administrator or a service contract seller.

(f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

SEC. 2. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for these goods.

(l) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, for an additional cost, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate



who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

- (1) Providing service contract sellers with service contract forms.
- (2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2. A service contract administrator shall not be an obligor on a service contract.

(q) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(r) "Service contractor" means a service contract administrator or a service contract seller.

(s) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code, and unless they are intended to assist the limited vision of the person so disabled.

(t) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(u) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, room air-conditioner, or other kind of appliance product normally used or sold for personal, family, or household purposes.

(v) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

(w) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

O

94

000161

0089

MJN/899

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

**Artifact of Photocopy Reproduction**

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0089

**MJN/900**

document received by the CA 4th District Court of Appeal Division 2.

**E073766**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO**

---

**EVERARDO RODRIGUEZ et al.,**  
*Plaintiffs and Appellants,*

*v.*

**FCA US, LLC,**  
*Defendant and Respondent.*

---

APPEAL FROM RIVERSIDE COUNTY SUPERIOR COURT  
JACKSON LUCKY, JUDGE • CASE No. RIC1807727

---

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE  
Volume 5 of 5 • Pages 00895 – 00923 of 00923**

---

**HORVITZ & LEVY LLP**  
LISA PERROCHET (BAR No. 132858)  
\*SHANE H. MCKENZIE (BAR No. 228978)  
3601 WEST OLIVE AVENUE, 8TH FLOOR  
BURBANK, CALIFORNIA 91505-4681  
(818) 995-0800 • FAX: (844) 497-6592  
lperrochet@horvitzlevy.com  
smckenzie@horvitzlevy.com

**CLARK HILL LLP**  
DAVID L. BRANDON (BAR No. 105505)  
1055 WEST SEVENTH STREET, 24TH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
(213) 417-5306 • FAX: (213) 488-1178  
dbrandon@clarkhill.com

**CLARK HILL LLP**  
GEORGES A. HADDAD (BAR No. 241785)  
ONE EMBARCADERO CENTER, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 984-8500 • FAX: (415) 984-8599  
ghaddad@clarkhill.com

ATTORNEYS FOR DEFENDANT AND RESPONDENT  
**FCA US, LLC**

1  
2  
3  
4  
5  
6 **DECLARATION OF JAN S. RAYMOND**  
7

8 I, Jan Raymond declare:

9 I am an attorney licensed to practice by the California State Bar, State Bar number  
10 88703, and admitted to practice in the United States Federal Court for the Eastern  
11 District of California. My business is researching legislative history and interpreting  
12 legislative intent, I have over 15 years experience in legislative research and analysis of  
13 legislative intent.

14 In cooperation with persons working under my supervision, I undertook to research the  
15 legislative history of the following project. All use of the word project in this declaration  
16 refers to legislative research addressed to this focus:

17 **Civil Code Sections 1791(o), 1791.2(a)(1), 1794(a)&(b) & 1795.7**

18 **In particular:**

19 **Chapter 1333, Statutes of 1970**

20 **Enacting Civil Code Sections 1791.2(a)(1) and 1794.**

21 **Chapter 1523, Statutes of 1971**

22 **Enacting 1795.5 and amending 1794**

23 **Chapter 169, Statutes of 1974**

24 **Enacting 1795.5(d)**

25 **Chapter 991, Statutes of 1978**

26 **Enacting 1791(o)**

27 **Chapter 385, Statutes of 1982**

28 **Repealing and reenacting 1794**

**Chapter 728, Statutes of 1983**

**Amending 1795.5**

**Chapter 1047, Statutes of 1985**

**Amending 1791(o)**

**Chapter 1280, Statutes of 1987**

**Adding 1793.2(d)(2) and amending 1794**

**Chapter 1265, Statutes of 1993**

**Amending 1791(o)**

1                   **Chapter 196, Statutes of 1998**  
2                   **Amending 1791(o).**

3       We reported in four volumes under cover of declarations dated April 3 and 4, 2000, with  
4       a supplementary report regarding Chapter 1238 of the Statutes of 1987 under cover of a  
5       declaration dated April 11, 2000. This declaration concerns additional supplementary  
6       material pertinent to Assembly Bill 1367 of 1987-88. While pending in 1987 AB 1367  
7       contained proposed amendments to Civil Code Section 1794 which were later moved to  
8       AB 2057 where they were enacted by Chapter 1283, Statutes of 1987. All provisions of  
9       my prior declaration pertinent to the scope of the research and report are applicable to  
10      this supplementary declaration.

11      **The following documents accompany this declaration:**

12      **Assembly Bill 1367 as considered in 1987**

13      Excerpt regarding AB 1367 (Tanner) from the Assembly Final History, 1987-88  
14      Regular Session. Page 1

15      AB 1367 as introduced March 1, 1987 Page 3

16      Documents regarding AB 1367 as introduced from the bill file of the author, five  
17      pages. Page 5

18      Assembly Committee on Governmental Efficiency and Consumer Protection  
19      analysis of AB 1367 as introduced for hearing May 19, 1987. Page 10

20      Documents regarding AB 1367 as introduced from the bill file of the Assembly  
21      Republican Caucus, six pages. Page 12

22      Senate Committee on Insurance, Claims and Corporations Background  
23      Information Request re AB 1367, from the bill file of the author, one page. Page 18

24      Senate Insurance Claims and Corporations analysis of AB 1367 as introduced. Page 19

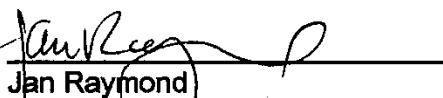
25      Letter dated July 10, 1987, from the bill file of the author, one page. Page 20

26      AB 1367 as amended in the Senate May 11, 1988. Page 21

This collection ends with page 24

27      **I declare under penalty of perjury the foregoing is true and correct.**

28      Executed at Davis California, May 9, 2000.

29        
30      Jan Raymond

31      (888) 676-1947

**Declaration of Jan Raymond**

Page 2 of 2

For definitions of the legislative terms used in this declaration, visit the California law page at

LEGISLATIVE HISTORY CLEARINGHOUSE

www.lhclearinghouse.com

0089

**MJN/903**

Document received by the CA 4th District Court of Appeal Division 2.



VOLUME 1  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1987-88 REGULAR SESSION  
1987-88 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF  
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,  
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 1, 1986  
Recessed December 3, 1986                      Reconvened January 5, 1987  
Recessed April 9, 1987                      Reconvened April 20, 1987  
Recessed July 16, 1987                      Reconvened August 17, 1987  
Recessed September 11, 1987                      Reconvened January 4, 1988  
Recessed March 24, 1988                      Reconvened April 4, 1988  
Recessed June 30, 1988                      Reconvened August 1, 1988  
Adjourned September 1, 1988  
Adjourned Sine Die November 30, 1988  
Legislative Days..... 246

HON. WILLIE L. BROWN JR.  
*Speaker*

HON. MIKE ROOS  
*Speaker pro Tempore*

HON. PHILLIP ISENBERG  
*Assistant Speaker pro Tempore*

HON. THOMAS HANNIGAN  
*Majority Floor Leader*

HON. PAT NOLAN  
*Minority Floor Leader*

*Compiled Under the Direction of*  
R. BRIAN KIDNEY  
*Chief Clerk*

GUNVOR ENGLE  
*History Clerk*

000001

0089

MJN/904

Document received by the CA 4th District Court of Appeal Division 2.

## A.B. No. 1366—Costa.

An act to add Section 391 to the Fish and Game Code, relating to fish and game.  
1987

- Mar. 4—Read first time. To print.
- Mar. 5—From printer. May be heard in committee April 4.
- Mar. 17—Referred to Com. on W.P. & W.
- April 29—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. with recommendation: To Consent Calendar. (Ayes 12. Noes 0.) (April 22).
- April 30—Read second time and amended.
- May 5—Re-referred to Com. on W. & M.
- May 28—From committee: Do pass. To Consent Calendar. (May 27).
- June 1—Read second time. To Consent Calendar.
- June 3—Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 2468.)
- June 4—In Senate. Read first time. To Com. on RLS. for assignment.
- June 11—Referred to Com. on N.R. & W.
- June 30—From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 5. Noes 0.)
- July 9—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
- July 13—Read second time. To third reading.
- July 16—Read third time, passed, and to Assembly. (Ayes 36. Noes 0. Page 2903.)
- July 16—In Assembly. To enrollment.
- July 20—Enrolled and to the Governor at 4 p.m.
- July 29—Approved by the Governor.
- July 30—Chaptered by Secretary of State - Chapter 297, Statutes of 1987.

## A.B. No. 1367—Tanner.

An act to amend Section 9889.75 of the Business and Profession Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.  
1987

- Mar. 4—Read first time. To print.
- Mar. 5—From printer. May be heard in committee April 4.
- Mar. 26—Referred to Com. on G.E. & CON.PRO.
- May 20—From committee: Do pass. To Consent Calendar. (May 19).
- May 21—Read second time. To Consent Calendar.
- May 26—Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 2246.)
- May 27—In Senate. Read first time. To Com. on RLS. for assignment.
- June 4—Referred to Com. on INS., CL. & CORPS.
- July 2—From committee: Do pass. To Consent Calendar.
- July 6—Read second time. To Consent Calendar.
- July 9—From Consent Calendar. To inactive file on motion of Senator Mello.
- 1988
- May 5—From inactive file. Re-referred to Com. on APPR.
- May 11—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.
- May 19—Withdrawn from committee. Re-referred to Com. on JUD.
- May 23—In committee: Hearing postponed by committee.
- May 27—From committee: Amend, and do pass as amended. (Ayes 8. Noes 0.)
- May 31—Read second time, amended, and to third reading.
- June 9—Read third time. Urgency clause adopted. Passed and to Assembly. (Ayes 39. Noes 0. Page 6420.)
- June 9—In Assembly. Concurrence in Senate amendments pending.
- June 13—Urgency clause adopted. Senate amendments concurred in. To enrollment. (Ayes 75. Noes 0. Page 8327.)
- June 14—Enrolled and to the Governor at 2 p.m.
- June 23—Approved by the Governor.
- June 23—Chaptered by Secretary of State - Chapter 203, Statutes of 1988.

000002

00899

MJN/905

Document received by the CA 4th District Court of Appeal Division 2.

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Tanner

March 4, 1987

An act to amend Section 1794 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as introduced, Tanner. Warranties: remedies.

Existing law provides that any buyer of consumer goods who is damaged by a failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. Existing law sets forth the measure of the buyer's damages in an action, as specified.

This bill would specify that the measure of the buyer's damages in an action includes, in addition, the rights of replacement or reimbursement, as set forth in specified provisions of the act. The bill would declare that the provision does not constitute a change in, but is declaratory of, existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1794 of the Civil Code is
- 2 amended to read:
- 3 1794. (a) Any buyer of consumer goods who is
- 4 damaged by a failure to comply with any obligation
- 5 under this chapter or under an implied or express
- 6 warranty or service contract may bring an action for the

000003

00900

MJN/906

Document received by the CA 4th District Court of Appeal Division 2.

1 recovery of damages and other legal and equitable relief.

2 (b) The measure of the buyer's damages in an action  
3 under this section shall ~~be as follows~~ *include the rights of*  
4 *replacement or reimbursement as set forth in subdivision*  
5 *(d) of Section 1793.2, and the following:*

6 (1) Where the buyer has rightfully rejected or  
7 justifiably revoked acceptance of the goods or has  
8 exercised any right to cancel the sale, Sections 2711, 2712,  
9 and 2713 of the Commercial Code shall apply.

10 (2) Where the buyer has accepted the goods, Sections  
11 2714 and 2715 of the Commercial Code shall apply, and  
12 the measure of damages shall include the cost of repairs  
13 necessary to make the goods conform.

14 (c) If the buyer establishes that the failure to comply  
15 was willful, the judgment may include, in addition to the  
16 amounts recovered under subdivision (a), a civil penalty  
17 which shall not exceed two times the amount of actual  
18 damages. This subdivision shall not apply in any class  
19 action under Section 382 of the Code of Civil Procedure  
20 or under Section 1781, or with respect to a claim based  
21 solely on a breach of an implied warranty.

22 (d) If the buyer prevails in an action under this  
23 section, the buyer may be allowed by the court to recover  
24 as part of the judgment a sum equal to the aggregate  
25 amount of costs and expenses, including attorney's fees  
26 based on actual time expended, determined by the court  
27 to have been reasonably incurred by the buyer in  
28 connection with the commencement and prosecution of  
29 such action, unless the court in its discretion determines  
30 that such an award of attorney's fees would be  
31 inappropriate.

32 SEC. 2. The amendment of Section 1794 of the Civil  
33 Code made at the 1987-88 Regular Session of the  
34 Legislature does not constitute a change in, but is  
35 declaratory of, the existing law.

O

(20)

# LEGISLATIVE COUNSEL No. 06631

REQUEST OF

ASSEMBLY MEMBER SALLY TANNER  
Per letter

BILL--

Draft bill per attached.

Any question, contact Arnie Peters S-0991.

ATTACHMENTS:

1-page letter from requester; 2-page letter from Jay J. DeFuria; 2-pages  
Civil Code, Section 1794.

Lemon Law (B)

2/6/87

Typed 2/7/87

This will acknowledge your request received on the date indicated. Please examine  
the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Mr. Majes 5-6931  
to whom it has been assigned.

BION M. GREGORY  
Legislative Counsel

000005

0090

MJN/908

Document received by the CA 4th District Court of Appeal Division 2.

6631

February 6, 1987

MEMORANDUM

TO: Assemblywoman Sally Tanner

FROM: Jay J. DeFuria

SUBJECT: Legislative Proposal: "Clean-up" (clarifying)  
amendment to your AB 3560 of 1982 (Chapter 385,  
Statutes of 1982)

ISSUE

As I briefly discussed with you and Arnie in your office recently, an interpretation concerning Civil Code Section 1794 (in the Song-Beverly Consumer Warranty Act) has been broached by an automobile manufacturer's attorney in at least one pending consumer auto "lemon" case which, were it to become accepted, could seriously weaken your lemon law. This problem was brought to my attention by the consumer's attorney (Mr. Brian Kermnitzer-San Francisco) who requested that Section 1794 be amended to clarify its meaning and ward off this dangerous misinterpretation.

BACKGROUND

Civil Code Section 1794 is a provision of the Song-Beverly Act which gives the consumer the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's (or others) failure to comply with Song-Beverly warranty obligations. You authored AB 3560 in 1982 which made some "fine tuning" clarifications to Section 1794 (the bill's sponsor was the Department of Consumer Affairs).

Section 1794 specifies what the measure of damages will be for the buyer in certain circumstances by reference to specified California Commercial Code provisions. However, as you know, Civil Code Section 1793.2 (the "lemon" law) provides a buyer with the right to obtain either a refund ("reimbursement") or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts (4X/30 days for new autos.)

PROBLEM

The misinterpretation problem comes about because Section 1794 does not specifically include the refund/replacement remedy provided to the buyer by Section 1793.2 (nor other remedies

000006

0090

MJN/909

Document received by the CA 4th District Court of Appeal Division 2.

6631

provided for in the Song-Beverly Act). The result has been for the auto manufacturer's attorney to argue in court that a plaintiff car buyer can sue only for the Section 1794 remedies and not for the Section 1793.2 refund/replacement remedy. I think that argument is ludicrous since were it to be accepted, it would drastically reduce any incentive for the manufacturer to offer a refund before a lawsuit, and cause them to argue the refund is an unavailable remedy in a lawsuit. (They argue the buyer only has the right to obtain the difference in value between what the defective car is worth and what it would have been worth without the defects).

#### THE PROPOSAL

The legislative proposal is simply to amend Civil Code Section 1794 by adding language that would clearly specify that the refund/replacement remedy provided by Section 1793.2 is available to a buyer in a lawsuit brought against a warrantor for defective products.

The language for the amendment would be as follows:

Amend Section 1794(b) of the Civil Code by deleting "as follows:" after the word "shall" and inserting:

include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following  
(See attached markup)

Because this amendment is a clarification that Section 1794 doesn't preclude Section 1793.2 remedies, and to avoid the possibility of having this proposed amendment construed otherwise, I would also recommend that the following legislative intent be added as uncodified language in the bill:

Sec.2. (of the bill) The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of existing law.

Finally, I would recommend that this proposal be considered for introduction as a separate bill, rather than as an amendment to your 1987 "Lemon Law II" bill. The rationale is that it is a clean-up to your previous non-lemon law legislation and that having it in a separate bill will reduce confusion and keep it separated from any controversy that may attach to your direct lemon law clean-up efforts.

If I can be of further assistance to you on this issue please let me know.

JJD:bj

000007

0090

**MJN/910**

Document received by the CA 4th District Court of Appeal Division 2.



§ 1793.5

CONSUMER WARRANTIES

Div. 3

Library References

Sales 442.  
C.J.S. Sales § 374 et seq.

§ 1793.6. Liability of manufacturer to independent service and repair facility

Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent serviceman for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.

(Added by Stats.1976, c. 416, p. 1072, § 4.)

Library References

Implied and Constructive Contracts 6.  
C.J.S. Money Paid §§ 1 to 5.

§ 1794. Actions by buyers; measure of damages; civil penalties; costs and expenses; attorney's fees

(a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows: *include the rights of replacement or reimbursement as set forth in Section 1793.2(d), and the following:*

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

6631

**CONSUMER WARRANTY PROTECTION**  
**PL. 4**

**§ 1794**

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied warranty.

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

(Added by Stats.1982, c. 385, p. 1716, § 2.)

**Historical Note**

Former § 1794, added by Stats.1970, c. 1333, p. 2482, § 1, amended by Stats.1971, c. 1523, p. 3007, § 13; Stats.1978, c. 991, p. 3065, § 10, relating to similar subject matter, was repealed by Stats.1982, c. 385, p. 1716, § 1.

Former § 1794, added by Stats.1931, c. 1070, p. 2257, § 1, as part of the Uniform Sales Act, was repealed by Stats.1963, c. 819, p. 1997, § 2, eff. Jan. 1, 1965. See, now, Com.C. § 1102.

**Derivation:** Former § 1794, added by Stats.1970, c. 1333, p. 2482, § 1, amended by Stats.1971, c. 1523, p. 3007, § 13; Stats. 1978, c. 991, p. 3065, § 10.

Former § 1794.2, added by Stats.1979, c. 1023, p. 3496, § 6.

Former § 1794.2, added by Stats.1970, c. 1333, p. 2483, § 3, amended by Stats.1971, c. 1523, p. 3007, § 14.

Former § 1794.2, added by Stats.1970, c. 1333, p. 2478, § 1.

**Forms**

See West's California Code Forms, Civil.

**Cross References**

Attorney's fees and costs, award, see § 1717.  
Automobile conditional sales contract, attorney's fees, see § 2983.4.  
Buyer's damages for breach in regard to accepted goods, see Commercial Code § 2714.  
Credit card holder, award of attorney's fees against issuer or retailer, see §§ 1747.50, 1747.60, 1747.70.  
Damages, generally, see §§ 3274, 3281 et seq.

**Law Review Commentaries**

Mass contracts: Lawful fraud in California. W. David Slawson (1974) 48 So. Cal. L.R. 1.  
Products liability: Recovery of economic loss. (1977) 13 C.W.L.R. 297.

**Library References**

Costs ⇨ 173(1).	C.J.S. Costs § 2.
Penalties ⇨ 3.	C.J.S. Penalties § 2.
Sales ⇨ 442.	C.J.S. Sales § 374 et seq.

000009

Document received by the CA 4th District Court of Appeal Division 2

**BLANK PAGE**

Artifact of Photocopy Reproduction

**JAN RAYMOND**  
**LEGISLATIVE HISTORY AND LEGISLATIVE INTENT**  
**1 (888) 676-1947**

0090

**MJN/913**

Document received by the CA 4th District Court of Appeal Division 2.

Date of Hearing: May 19, 1987

*Amie*  
AB 1367

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION  
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

*MAY 13*

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE \_\_\_\_\_ COMMITTEE \_\_\_\_\_ VOTE \_\_\_\_\_

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

000010

- continued -

AD 00907

**MJN/914**

Document received by the CA 4th District Court of Appeal Division 2.

refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.

Ann Evans  
324-2721  
ageconpro

000011

00909

**MJN/915**

Document received by the CA 4th District Court of Appeal Division 2.

SCS Agency

## BILL ANALYSIS

Analyst: 6  
Bus. Pn: 3  
Home Ph:

Department <b>CONSUMER AFFAIRS</b>	Author <b>Tanner</b>	Bill <b>AB 2057</b>
Sponsored by	Related Bills	Date Last Revised
Author	AB 2057	original

SUMMARY

1 Description

BACKGROUND

- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

FISCAL IMPACT ON STATE BUDGET

- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 State Mandated

SOCIO-ECONOMIC IMPACT

- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development

INTERESTED PARTIES

- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments

RECOMMENDATION & SPECIFICATION

- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended
- 43 Amended Language Attached

BILL SUMMARY

Existing law provides that any buyer of consumer goods who is damaged by a manufacturer's failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may sue for damages and other legal and equitable relief.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the right of replacement or restitution pursuant to the New Car Lemon Law.

Background

The Song-Beverly Consumer Warranty Act provides that if the manufacturer of a consumer product is unable to service or repair the product to repair a nonconformity after a reasonable number of attempts, the manufacturer must either replace the product or reimburse the buyer for the price of the product, less an amount attributable to the buyer's use before discovery of the nonconformity.

The act in Civil Code section 1794, provides that any buyer who is damaged by a manufacturer's failure to comply with any obligation under the act may sue for damages and other legal and equitable relief as specified.

AMENDMENT SUMMARY:

Dept. Director Position  
☒S ☐O ☐SIA ☐OUA  
☐N ☐Defer

Agency Sectry. Position  
☒S ☐O ☐SIA ☐OUA  
☐N ☐Defer

Governor's Office Use  
☒ Position Noted  
☐ Position Approved  
☐ Position Disapproved  
 By: **217** Date: **7/24**

Department Director

*Michael Kelley*  
 99D-7 (Rev. 1/84)

Date

6/25/87

Agency Secretary

Noted, signed by  
 KAREN L. MORAN  
 Assistant Secretary  
 Legislation

Date

7/24

000012

0091

MJN/916

Document received by the CA 4th District Court of Appeal Division 2.

The New Car Lemon Law, which is contained in the Song-Beverly Consumer Warranty Act, establishes that a "reasonable number of attempts" to repair a new motor vehicle have been made if, within the first year or 12,000 miles, either (a) the manufacturer has been unable to repair the same nonconformity after four attempts or (2) the vehicle is out of service for repairs for a total of at least 30 days since delivery of the vehicle to the buyer. A vehicle which meets this test is deemed a "lemon," and the buyer has the right to restitution or replacement.

Since the New Car Lemon Law is a part of the Song-Beverly Consumer Warranty Act, buyers of "lemons" have the same remedies (i.e., the right to sue for damages and other legal and equitable relief pursuant to Civil Code section 1794) as do buyers of other consumer goods. However, their remedies are not exclusively those found in Civil Code section 1794.

In a recent lemon law case, the defendant automobile manufacturer argued that the plaintiff car buyer could sue only for the remedies specifically referenced in Civil Code section 1794. That section does not specifically entitle car buyers to restitution or replacement of a "lemon." If this were the case, buyers of "lemons" would be simply be stuck with them.

The Department of Consumer Affairs and other consumer protection representatives believe that the New Car Lemon Law clearly entitles the buyer of a "lemon" restitution or a replacement vehicle, either by award of the manufacturer's lemon law arbitration panel or by court judgment. However, to avoid any future attempts by manufacturers to argue that new car buyers are only entitled to the remedies contained in section 1794, the author has introduced this bill to affirm that the buyer of a "lemon" who brings an action for damages under the Song-Beverly Consumer Warranty Act does have the right to restitution or replacement.

#### Specific Findings

- o This bill would preclude future arguments by vehicle manufacturers in lemon law cases that the buyer of a "lemon" is not entitled to restitution or replacement because restitution or replacement is not specifically mentioned as a remedy in Civil Code section 1794.
- o This bill would declare that the changes in the bill are declaratory of existing law.

#### Fiscal Impact

No fiscal impact to the Department of Consumer Affairs.

000013

MJN/917

Document received by the CA 4th District Court of Appeal Division 2.



Socio-Economic Impact

This bill would enhance the effectiveness of the New Car Lemon Law by affirming that buyers of "lemons" are entitled to an award of restitution or replacement in a legal action.

Argument

Interested Parties

Proponents: author (sponsor)  
Attorney General

Opponents: None known

The purpose of this bill is set forth under Background, above.

Recommendation

The Department of Consumer Affairs recommends a SUPPORT position on this bill.

000014

00918

MJN/918

document received by the CA 4th District Court of Appeal Division 2.

ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION  
REPUBLICAN ANALYSIS

AB 1367 (Tanner) -- CONSUMER REMEDIES ON WARRANTIES

Version: 5/31/88

Chairman: Stan Statham

Recommendation: None

Vote: 2/3 Urgency

Summary: Clean-up legislation of Chapter 1280 of 1987 (Tanner) which relates to the Bureau of Automotive Repairs and the Department of Motor Vehicles administration of the motor vehicle third-party dispute resolution process.

Fiscal effect: The department indicates that any costs associated with this measure would be minor and absorbable within existing resources.

Supported: Unknown. Opposed: Unknown. Governor's position: Unknown.

Comments: Revises the new car lemon law and requires the bureau to certify third party agencies which assist in dispute resolution. The Senate amendments relate to collection of fees which provide funding for third party resolutions to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. This measure would instead require every manufacturer to file a statement on or before May first of each year which contains specified information and to pay a fee within a specified time after written notification. A penalty may be assessed if the fee is delinquent.

Assembly Republican Committee Vote:

G.E. & C.P. -- 5/12/87

(8-0) Ayes: Frazee, Grisham, Harvey  
Abs.: Stirling

Assembly Floor -- 5/26/87

(74-0) Ayes: All Republicans

Senate Republican Committee Vote:

Ins., Cl. & Corps. -- 7/1/87

(9-0) Ayes: All Republicans

Judiciary -- 5/24/88

(8-0) Ayes: All Republicans

Senate Floor -- 6/9/88

(39-0) Ayes: All Republicans

Consultant: Wess Larson

000015

0091

MJN/919

Document received by the CA 4th District Court of Appeal Division 2.

**SUBJECT:** Warranties: motor vehicle third-party dispute resolution

**SOURCE:** Author

**DIGEST:** This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

**ANALYSIS:** The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party

000016

0091

MJN/920

Document received by the CA 4th District Court of Appeal Division 2.

arbitration has become an accepted procedure. However, passage of AB 2057, the Legislature recognized the need that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No  
Local: No

RJG:nf 6/1/88 Senate Floor Analyses

000017

0091

MJN/921

Document received by the CA 4th District Court of Appeal Division 2.

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS  
ALAN ROBBINS, Chairman

*Arnie*  
JUN - 8 1987

BACKGROUND INFORMATION REQUEST

MEASURE: AB 1367

DATE SENT: 6/5/87

AUTHOR: Tanner

DATE REC'D BACK: \_\_\_\_\_

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization or governmental entity requested information?

Former Assembly Consumer Affairs Committee Consultant

- b. Please identify session and bill number of similar bills:

AB 3560 (1982)

- c. Which Legislative Counsel deputy drafted this bill?

Name Mr. Mojer Phone # 5-6931

2. What is the problem or deficiency in the present law which the bill seeks to remedy? How does it do this?

See attached memo

3. Please attach all background material and any correspondence related to the bill.

4. Do you intend to amend this bill? No  
(Reminder, Amendments are due to the committee by 1:30pm on the Friday before the hearing)

5. Name of contact person: Arnie Peters

ATTACHMENTS: Yes X NO \_\_\_\_\_

000018

0091

MJN/922

Document received by the CA 4th District Court of Appeal Division 2.

**BLANK PAGE**

Artifact of Photocopy Reproduction

**JAN RAYMOND  
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT  
1 (888) 676-1947**

0091

**MJN/923**

Document received by the CA 4th District Court of Appeal Division 2.

**SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE**

**ASSEMBLY BILL NO. 1367**

**SENATOR ALAN ROBBINS, CHAIRMAN**

**ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987**  
**Civil Code**

Source: Author

Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)

Support: No known

Opposition: No known

**SUBJECT**

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

**DIGEST**

1] **Description:** AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] **Background:** Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

**FISCAL EFFECT**      Fiscal Committee: No

**STAFF COMMENTS**

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART  
Consultant

ASSEMBLY BILL NO. 1367

07/01/87

000019

0091

**MJN/924**

Document received by the CA 4th District Court of Appeal Division 2.



JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO 94244-2550  
(916) 445-9555

July 10, 1987

Honorable Sally Tanner  
Assemblymember, 60th District  
State Capitol, Room 4146  
Sacramento, CA 95814

Dear Assemblymember Tanner:

Re: AB 1367 - Warranties: Remedies

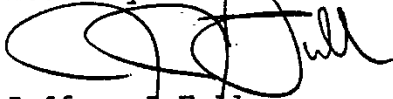
The Attorney General's office supports AB 1367 which would include the rights of replacement or reimbursement as damages for a consumer who sues under the Song-Beverly Consumer Warranty Act.

Under current law, notwithstanding that the consumer has the right to replacement or reimbursement for a vehicle which cannot be repaired, that right of replacement or reimbursement is not set forth in section 1794 of the Civil Code as damages which may be recoverable by the buyer under the Song-Beverly Consumer Warranty Act. The buyer can only get the difference between the value of the goods as accepted and the value of the goods had they complied with the warranty. This obviously creates an anomalous result which your bill would correct by providing remedies in the damages section of the Song-Beverly Act which are consistent with the provisions of the Act itself.

If we can be of further assistance in supporting the bill, please call me at 324-5478.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

  
Jeffrey J. Fuller  
Deputy Attorney General

JJF:er

000020

00919

MJN/925

Document received by the CA 4th District Court of Appeal Division 2.

AMENDED IN SENATE MAY 11, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Tanner

March 4, 1987

An act to amend Section 1794 of the Civil Code, relating to warranties; 9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Tanner. Warranties: remedies motor vehicle third-party dispute resolution.

Existing law provides that any buyer of consumer goods who is damaged by a failure to comply with any obligation under the Song/Beverly Consumer Warranty Act or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. Existing law sets forth the measure of the buyer's damages in an action, as specified.

This bill would specify that the measure of the buyer's damages in an action includes, in addition, the rights of replacement or reimbursement, as set forth in specified provisions of the act. The bill would declare that the provision does not constitute a change in, but is declaratory of, existing law.

Under existing law, on July 1, 1988, the Certification Account is created within the Automotive Repair Fund. This account is to be funded by fees imposed upon applicants for licenses as manufacturers or distributors or for renewal of licenses as manufacturers or distributors. The fees are to be collected by the New Motor Vehicle Board and are to be

98 60  
00920

MJN/926

000021

expended upon appropriation by the Legislature to pay the expenses of the Bureau of Automotive Repair in administering the program for certification of third-party dispute resolution processes. On or before January 1 of each calendar year, the bureau is to determine, as specified, the dollar amount to be collected by the Department of Motor Vehicles and to notify the board of this dollar amount.

This bill would revise the provisions relating to the collection of fees to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. The bill would instead require every manufacturer to file a statement in February of each year which contains specified information and to pay a fee within a specified time after written notification by the board. The bill would also make related changes. A penalty would be assessed against the manufacturer for delinquent payments.

This bill would require the bureau to notify the board of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1, but would not specify the method by which the board is to determine the dollar amount.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: majority %. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** ~~Section 1794 of the Civil Code is~~  
 2 **SECTION 1.** ~~Section 9889.75 of the Business and~~  
 3 ~~Professions Code, as added by Chapter 1280 of the~~  
 4 ~~Statutes of 1987, is amended to read:~~  
 5 9889.75. The New Motor Vehicle Board in the  
 6 Department of Motor Vehicles shall, in accordance with  
 7 the procedures prescribed in this section, administer the  
 8 collection of fees for the purposes of fully funding the  
 9 administration of this chapter.  
 10 (a) There is hereby created in the Automotive Repair  
 11 Fund a Certification Account. Fees collected pursuant to  
 12 this section shall be deposited in the Certification

1 Account and shall be available, upon appropriation by the  
 2 Legislature, exclusively to pay the expenses incurred by  
 3 the bureau in administering this chapter. If at the  
 4 conclusion of any fiscal year the amount of fees collected  
 5 exceeds the amount of expenditures for that purpose  
 6 during that fiscal year, the surplus in the Certification  
 7 Account shall be carried over into the succeeding fiscal  
 8 year.

9 (b) Beginning July 1, 1988, every applicant for a  
 10 license as a manufacturer, manufacturer branch,  
 11 distributor, or distributor branch, and every applicant for  
 12 the renewal of a license as a manufacturer, manufacturer  
 13 branch, distributor, or distributor branch, shall  
 14 accompany the application with and on or before  
 15 February 1 of each calendar year thereafter, every  
 16 manufacturer shall file with the New Motor Vehicle  
 17 Board a statement of the number of motor vehicles sold,  
 18 leased, or otherwise distributed by or for the applicant  
 19 manufacturer in this state during the preceding calendar  
 20 year, and shall, upon written notice, pay to the  
 21 Department of Motor Vehicles, for each issuance or  
 22 renewal of the license, an amount prescribed by the New  
 23 Motor Vehicle Board; but a fee, not to exceed one dollar  
 24 (\$1) for each motor vehicle sold, leased, or distributed by  
 25 or for the applicant manufacturer in this state during the  
 26 preceding calendar year. The total fee paid by each  
 27 licensee manufacturer shall be rounded to the nearest  
 28 dollar in the manner described in Section 9559 of the  
 29 Vehicle Code. No more than one dollar (\$1) shall be  
 30 charged, collected, or received from any one or more  
 31 licensees manufacturer pursuant to this subdivision with  
 32 respect to the same motor vehicle.  
 33 (c) (1) The fee required by subdivision (b) is due and  
 34 payable no later than 30 days after the New Motor  
 35 Vehicle Board has given notice to the manufacturer of  
 36 the amount due and is delinquent after that time. A  
 37 penalty of 10 percent of the amount delinquent shall be  
 38 added to that amount, if the delinquency continues for  
 39 more than 30 days.

\* 40 (2) In the event that a manufacturer fails to file the

1 statement required by subdivision (b) by the date  
 2 specified, the New Motor Vehicle Board shall assess the  
 3 amount due from the manufacturer by using as the  
 4 number of motor vehicles sold, leased, or otherwise  
 5 distributed by or for the manufacturer in this state during  
 6 the preceding calendar year the total number of new  
 7 registrations of all motor vehicles sold, leased, or  
 8 otherwise distributed by or for the manufacturer during  
 9 the preceding calendar year.

10 (e)  
 11 (d) On or before ~~January~~ February 1 of each calendar  
 12 year, the bureau shall ~~determine the dollar amount, not~~  
 13 ~~to exceed one dollar (\$1) per motor vehicle, which shall~~  
 14 ~~be collected and received by the Department of Motor~~  
 15 ~~Vehicles beginning July 1 of that year, based upon an~~  
 16 ~~estimate of the number of sales, leases, and other~~  
 17 ~~dispositions of motor vehicles in this state during the~~  
 18 ~~preceding calendar year, in order to notify the New Motor~~  
 19 ~~Vehicle Board of the dollar amount necessary to fully~~  
 20 ~~fund the program established by this chapter during the~~  
 21 ~~following fiscal year. The bureau shall notify the New~~  
 22 ~~Motor Vehicle Board of the dollar amount per motor~~  
 23 ~~vehicle that the New Motor Vehicle Board shall use this~~  
 24 ~~information in calculating the amounts of the fees to be~~  
 25 ~~collected from applicants manufacturers pursuant to this~~  
 26 ~~subdivision section.~~

27 (d)  
 28 (e) For the purposes of this section, "motor vehicle"  
 29 means a new passenger or commercial motor vehicle of  
 30 a kind that is required to be registered under the Vehicle  
 31 Code, but the term does not include a motorcycle, a  
 32 motor home, or any vehicle whose gross weight exceeds  
 33 10,000 pounds.

34 (e)  
 35 (f) The New Motor Vehicle Board may adopt  
 36 regulations to implement this section.

37 SEC. 2. This act is an urgency statute necessary for  
 38 the immediate preservation of the public peace, health,  
 39 or safety within the meaning of Article IV of the  
 40 Constitution and shall go into immediate effect. The facts

1 constituting the necessity are:

2 Chapter 1280 of the Statutes of 1987 established a  
 3 program in the Bureau of Automotive Repair to certify  
 4 the operation of third-party dispute resolution processes  
 5 under the state's "Lemon Law" and imposed fees on auto  
 6 manufacturers to fund that program. Both the program  
 7 and fee collections are scheduled to become operative on  
 8 July 1, 1988. In order to establish a more efficient, less  
 9 costly method of collecting fees from auto manufacturers  
 10 to fund the certification program before it begins  
 11 operation, it is necessary that this act take effect  
 12 immediately.

13 amended to read:

14 1794. (a) Any buyer of consumer goods who is  
 15 damaged by a failure to comply with any obligation  
 16 under this chapter or under an implied or express  
 17 warranty or service contract may bring an action for the  
 18 recovery of damages and other legal and equitable relief.

19 (b) The measure of the buyer's damages in an action  
 20 under this section shall include the rights of replacement  
 21 or reimbursement as set forth in subdivision (d) of  
 22 Section 1793.2, and the following:

23 (1) Where the buyer has rightfully rejected or  
 24 justifiably revoked acceptance of the goods or has  
 25 exercised any right to cancel the sale, Sections 2711, 2712,  
 26 and 2713 of the Commercial Code shall apply.

27 (2) Where the buyer has accepted the goods, Sections  
 28 2714 and 2715 of the Commercial Code shall apply, and  
 29 the measure of damages shall include the cost of repairs  
 30 necessary to make the goods conform:

31 (c) If the buyer establishes that the failure to comply  
 32 was willful, the judgment may include, in addition to the  
 33 amounts recovered under subdivision (a), a civil penalty  
 34 which shall not exceed two times the amount of actual  
 35 damages. This subdivision shall not apply in any class  
 36 action under Section 382 of the Code of Civil Procedure  
 37 or under Section 1781, or with respect to a claim based  
 38 solely on a breach of an implied warranty.

39 (d) If the buyer prevails in an action under this  
 40 section, the buyer may be allowed by the court to recover

1 as part of the judgment a sum equal to the aggregate  
2 amount of costs and expenses, including attorney's fees  
3 based on actual time expended, determined by the court  
4 to have been reasonably incurred by the buyer in  
5 connection with the commencement and prosecution of  
6 such action; unless the court in its discretion determines  
7 that such an award of attorney's fees would be  
8 inappropriate.

9 SEC. 2. The amendment of Section 1794 of the Civil  
10 Code made at the 1987/88 Regular Session of the  
11 Legislature does not constitute a change in, but is  
12 declaratory of, the existing law.

000024

**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA**  
**US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ctobisman@gmsr.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
BRIEF	Petitioners' Opening Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Petitioners' Motion for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 1
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 2
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 3
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 4
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 5
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 6

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Georges Haddad Clark Hill LLP	ghaddad@clarkhill.com	e-Serve	10/11/2022 6:21:11 PM
Joseph Bui Greines, Martin, Stein & Richland LLP 293256	jbui@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Mark Skanes RoseWaldorf LLP 322072	mskanes@rosewaldorf.com	e-Serve	10/11/2022 6:21:11 PM
Sharon Arkin The Arkin Law Firm 154858	sarkin@arkinlawfirm.com	e-Serve	10/11/2022 6:21:11 PM
Cynthia Tobisman Greines Martin Stein & Richland, LLP 197983	ctobisman@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Payam Shahian Strategic Legal Practices, A Professional Corporation 228406	lwageman@slpattorney.com	e-Serve	10/11/2022 6:21:11 PM
David Brandon Clark Hill LLP 105505	dbrandon@clarkhill.com	e-Serve	10/11/2022 6:21:11 PM
Radomir Kirnos	rogerk@knightlaw.com	e-	10/11/2022

Knight Law Group LLP 283163		Serve	6:21:11 PM
Joseph Kaufman Joseph A. Kaufman & Associates, Inc. 228319	joe@lemonlawaid.com	e-Serve	10/11/2022 6:21:11 PM
Pro Per Attorney Nationwide Legal, LLC 135514	sfcourt@nationwideasap.com	e-Serve	10/11/2022 6:21:11 PM
Martin Anderson Anderson Law Firm 178422	firm@andersonlaw.net	e-Serve	10/11/2022 6:21:11 PM
Arlyn Escalante Rosner, Barry & Babbitt, LLP 272645	arlyn@rbblawgroup.com	e-Serve	10/11/2022 6:21:11 PM
Shane Mckenzie Horvitz & Levy, LLP 228978	smckenzie@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM
Hallen Rosner Rosner, Barry & Babbitt, LLP 109740	hal@rbblawgroup.com	e-Serve	10/11/2022 6:21:11 PM
Julian Senior SJL Law. P.C 219098	admin@sjllegal.com	e-Serve	10/11/2022 6:21:11 PM
Lisa Perrochet Horvitz & Levy 132858	lperrochet@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Richard Wirtz Wirtz Law APC 137812	rwirtz@wirtzlaw.com	e-Serve	10/11/2022 6:21:11 PM
Daniel Lebel Consumer Law Practice of Daniel T. LeBel 246169	danlebel@consumerlawpractice.com	e-Serve	10/11/2022 6:21:11 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Martin Anderson Anderson Law	martin@andersonlaw.net	e-Serve	10/11/2022 6:21:11 PM
Payam Shahian Strategic Legal Practices, APC 228406	pshahian@slpattorney.com	e-Serve	10/11/2022 6:21:11 PM
Joseph Kaufman Lemon Law Aid, Inc.	dulce@lemonlawaid.com	e-Serve	10/11/2022 6:21:11 PM
John Taylor, Jr. Horvitz & Levy LLP 129333	jtaylor@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/11/2022

---

Date

/s/Chris Hsu

---

Signature

Tobisman, Cynthia (197983)

---

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

---

Law Firm