

# BEARHFTI

BUREAU OF ELECTRONIC & APPLIANCE REPAIR,  
HOME FURNISHINGS & THERMAL INSULATION

## RECOMMENDATIONS OF THE SERVICE CONTRACT WORKING GROUP

OCTOBER 2016





# **Recommendations of the Service Contract Working Group**

**October 2016**



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**Contents**

- Introduction**..... 1
  - Purpose of the Report ..... 2
  - AB 2740..... 2
  - Role of the Working Group ..... 2
- History and the Current Regulatory Environment of the Industry** ..... 4
  - History of Regulation ..... 5
    - National ..... 5
    - Model Act ..... 5
    - California ..... 6
  - What is a Service Contract in California and Who are the Entities Involved? ..... 8
  - California Requirements vs. Other States/Regulatory Entities..... 9
    - California Requirements/Registration and Enforcement..... 9
    - California Department of Insurance..... 11
  - Other State Models..... 12
    - Exemption States ..... 12
    - Passively Regulated States..... 12
    - Regulated States..... 13
  - Comparison of Model Act with California Regulation ..... 13
- Trends and Perceptions**..... 15
  - Consumer Perception of Service Contracts ..... 16
  - Industry Comments and Recommendations..... 17
  - Service Contract Offerings – Current and Future..... 17
- Working Group Recommendations**..... 19
  - 1. Further Review the Bureau’s Jurisdiction of Various Consumer Products..... 20
  - 2. Ensure Product Cancellation of Coverage Consistency ..... 21
  - 3. Update Bureau Review and Labeling of Service Contracts ..... 22
  - 4. Update Financial Backing Requirements ..... 24
  - 5. Create a Clearer Delineation Between Service Contracts and Insurance ..... 26
  - 6. Update Insurers’ Notice Requirements to the Bureau..... 30
  - 7. Administrators’ Annual Reporting Requirements ..... 31
  - 8. Remove Single Year Agreement Restriction Between Manufacturers and Dealers ..... 32
  - 9. Other Considerations/Challenges ..... 33
- Appendices** ..... 34





# Introduction



## **Purpose of the Report**

Consumer service contracts have been regulated by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) since 1994. Since that time, the scope of the Bureau's jurisdiction has expanded considerably and continues to expand to cover a myriad of products. In addition, offerings and marketing techniques have changed and contracts have evolved from offering product repair to offering product replacement. Further, the number of service contract registrants continues to increase annually.

The Bureau's last formal study of the service contract industry was conducted in 1999; the market has evolved in many ways since that time. The Bureau underwent Sunset Review in 2013 and presented the Legislature with a report on November 1, 2013, that provided background information on the program, the state of the industry, and identified various regulatory issues relevant to the Bureau's enforcement authority.

## **AB 2740**

Assembly Bill 2740 (Bonilla, Chapter 428, Statutes of 2014) extended the Bureau's operations until January 1, 2019, and recommended that the Bureau provide the Legislature with additional information regarding certain areas of its jurisdiction. In its report, the Bureau studied both the electronic and appliance repair market and the home furnishings and thermal insulation market to determine whether regulatory activities were appropriate, necessary, and should be continued, and recommended areas of deregulation and areas to monitor in order to better target resources and evaluate consumer risk and impact.

AB 2740 requires the Bureau to "conduct market condition assessments to study these markets and determine if current statutes and regulations reflect the needs of the markets, where risk to consumers is greatest, where resources could be refocused or expanded, and whether continued regulation is clearly necessary across all segments of these markets."

After the Bureau conducted the market assessment, it determined further inquiry was necessary to evaluate the regulatory needs of the service contract industry to ensure improved consumer protection. In order to gain a solid perspective on the marketplace, the Bureau formed a Working Group consisting of members representing key industries (service contract administrators, manufacturers, retailers, servicers, and other affected participants), and the California Department of Insurance, to prepare a report to the Bureau that details what aspects of service contract statutes and regulations require modification.

## **Role of the Working Group**

The service contract industry and its regulated entities manifest the most dynamic growth of all the licensed populations regulated by the Bureau, and the offerings that are marketed to consumers are constantly evolving. The entities involved in the service contract industry span across states and, in some instances, countries. While the Bureau is aware of current offerings via filings from applicants and registrants, it has found that current statutes and regulations do not always address the numerous aspects of the industry and its unique position that bridges consumers, retailers, administrators, and repair facilities. In addition, the contract terms are frequently modified to meet other state requirements which often necessitate legal research to ensure compliance with California and federal rules. It is crucial that the Bureau keep abreast of industry issues to ensure consumer protection and equitable regulation of the industry.



# History and the Current Regulatory Environment of the Industry



## History of Regulation

### National

The United States Congress enacted the Magnuson-Moss Warranty Act (Act)<sup>1</sup> in 1975 to require uniform disclosures and minimum standards with respect to warranty coverage provided on products used for personal, family, and household use. The Act vested jurisdiction in the Federal Trade Commission (FTC) to administer and promulgate rules to implement the Act with respect to service contracts.<sup>2</sup> The FTC promulgated its rules on December 31, 1975.<sup>3</sup> See Appendix A for full wording of the Act.

The Act and FTC rules differentiate between a warranty and a service contract based primarily on the fact that a written warranty is part of the basis of the bargain of the purchase of the product. In contrast, a service contract is sold to a consumer for consideration separate and apart from the purchase of a covered product. In other words, a warranty is part of a consumer's purchase of a product while a service contract is a separate agreement for which the consumer must decide whether or not they wish to pay.

Under the Act, a service contract is a written instrument in which a supplier agrees to perform services relating to the maintenance, or repair, or both, of a consumer product over a fixed period or for a specified duration of time.<sup>4</sup> Agreements that meet the statutory definition of a service contract that are sold and regulated under state law as contracts of insurance do not come under the Act's provisions.<sup>5</sup>

Throughout the years, regulation of service contracts has been primarily undertaken by the states. According to the Bureau's report "The Service Contract Industry in California: Market Trends and Policy Issues," published August 31, 1999, there were thirty-five states that had some form of regulation regarding service contracts covering consumer goods. Currently, every state in the country has either enacted a law regulating the service contract industry, enacted a law defining and exempting the service contract industry from regulation as insurance, or informally opined that a service contract is not subject to regulation as an insurance product.

### Model Act Adoption by States

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.<sup>6</sup>

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<sup>1</sup> Pub. L. 93-637, 15 U.S.C. §§ 2301 et. seq.

<sup>2</sup> 15 U.S.C. § 2306(a).

<sup>3</sup> 16 C.F.R. pt. 700.

<sup>4</sup> 15 U.S.C. § 2301(8). The Act defines a "supplier" as "any person engaged in the business of making a consumer product directly or indirectly available to consumers." 15 U.S.C. § 2301(4).

<sup>5</sup> 16 C.F.R. § 700.11(a) (indicating that, "to the extent the Magnuson-Moss Warranty Act's service contract provisions apply to the business of insurance, they are effective so long as they do not invalidate, impair, or supersede a State law enacted for the purpose of regulating the business of insurance.").

<sup>6</sup> About the NAIC, at [http://naic.org/index\\_about.htm](http://naic.org/index_about.htm).

In 1995, the NAIC put forth the Service Contract Model Act (Model Act or Model #685),<sup>7</sup> which has been adopted by thirty-four states including California. The NAIC, with input from insurance industry members and other interested parties, drafted the Model Act in an attempt to provide consistency and a framework geared towards uniform regulation by each state's department of insurance. Some of these state laws were enacted with slight variations using the Model Act as the basis for their regulatory framework. For example, California adopted statutory language related to the Model Act, but only for vehicles.

A report published by the NAIC in 2014 states that twenty-eight states are designated as Category One. These states have adopted a comprehensive version of Model #685 for service contracts in at least one area (motor vehicle, residential, or appliance service contracts).<sup>8</sup> While California is listed in Category One as one of the states with this adoption, service contracts regulated by the Bureau do not fall under this scenario and are regulated under the California Business and Professions Code (BPC). The California Department of Insurance (CDI) regulates vehicle service contracts under a regulatory framework that is very similar to the Model Act<sup>9</sup> and regulates "whole home" service contracts under the home protection contract laws in the California Insurance Code (CIC).<sup>10</sup>

Category Two states provide partial service contract oversight. The thirteen states in this category "have adopted a more limited scheme of regulating service contracts by simply excluding service contracts from falling under their respective insurance codes, but not otherwise setting out the full array of registration and the financial responsibility requirements contained in the statutory provisions of Model #685."<sup>11</sup>

Category Three states are classified as having "no applicable legislation or an indication from state regulators or legislators that service contracts do not constitute insurance and are unregulated or regulated in a very limited manner."<sup>12</sup> Eight states are designated as Category Three.

Florida is separately discussed as having a "comprehensive licensure process of service agreement companies" and their approach was deemed "by far the most comprehensive regulatory approach in the country."<sup>13</sup>

### California

Five years before passage of the federal Magnuson-Moss Warranty Act, California codified the Song-Beverly Consumer Warranty Act in 1970 under the California Civil Code (Song-Beverly).<sup>14</sup> Song-Beverly did not initially contain language regarding service contracts and instead focused on express warranties, "as is" sales, and implied warranties at the point of sale of a product.

Several legislative bills regarding consumer product service contracts were introduced as early as 1988; however, the first bill was not passed until 1993 (SB 798 Rosenthal, Chapter 1265, Statutes of 1993), which placed service contracts sold for the same

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<sup>7</sup> Service Contracts Model Act MDL-685 (NAIC Jan. 1997). See Appendix B.

<sup>8</sup> Nat Pope, Chiharu Ishida, Peter Kaufman & Frederick W. Langrehr, *Extended Warranties in the U.S. Marketplace: A Strategy for Effective Regulation*, 33 J. INS. REG., No. 3, at 8 (NAIC Pub'ns 2014) [hereinafter *Extended Warranties*].

<sup>9</sup> Cal. Ins. Code §§ 12800 et seq.

<sup>10</sup> Cal. Ins. Code §§ 12740 et seq.

<sup>11</sup> *Extended Warranties*, supra note 8, at 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Cal. Civil Code §§ 1790-1795.8.



products (consumer electronic equipment and major home appliances) under the Bureau's repair jurisdiction and updated Song-Beverly to include definitions and provisions regarding service contracts. The legislation included a sunset date of January 1, 1998, which has been extended every sunset review cycle. The current sunset date is January 1, 2019. The Bureau promulgated regulations in 1994<sup>15</sup> and the first registrations were issued in June 1995.

Initial legislation was sponsored as a result of retailers and service contract administrators offering contracts without adequate financial backing and when these companies disappeared, consumers were left with contracts that were worthless. The most egregious example was an Oklahoma-based company named EWC, Inc. (EWC), which filed for reorganization under chapter 11 of the United States Bankruptcy Code in July 1991, and subsequently vanished. "EWC, through retailers and distributors, sold several million warranties across the country."<sup>16</sup>

Last summer's demise of Oklahoma City-based EWC [Inc.][sic] amid charges that its chairman looted the company socked 3.2 million consumers with an estimated repair tab totaling \$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.<sup>17</sup>

Other companies that sold contracts to California consumers but disappeared in the late 1980s and early 1990s include Pacific Stereo, Fedmart Stores, Gemco, Zody's, Crazy Eddies, and Handy Andy TV and Appliances.

As time passed, service contracts began to be offered on a variety of consumer products outside of consumer electronic/home office equipment and major home appliances. Concern about ensuring the same type of consumer protection over service contracts for these products grew, and companies that sold contracts on other products sought legislation to add the same level of regulation and requirements that were in place for the products already under the Bureau's jurisdiction.

In 2003, the Bureau's authority over service contracts was extended to include: furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, and home health care products. The initial law included provisions for financial backing of service contracts (insurance, escrow account, or providing a Form 10-K as filed with the Securities and Exchange Commission). The amendment also allowed for the alternative official backing of \$100,000,000 or more in net worth, evidenced in an audited statement.

In 2005, regulations were promulgated to define "home health care products."

In 2010, the addition of "accessories" of electronic sets and appliances was added to the regulated products list, the limit on incidental payment of indemnity was removed, and service contract administrators were allowed to become sellers and/or obligors on the service contracts, which was prohibited in the original law.

In 2013, service contracts on optical products (eyewear) were added to the Bureau's jurisdiction.

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<sup>15</sup> Now primarily at 16 Cal. Code Regs. §§ 2755 to 2758.5.

<sup>16</sup> *EWC Creditor Lists Proposed*, OKLAHOMAN, Feb. 27, 1992.

<sup>17</sup> *No Guarantee Behind Sales of Extended Warranties*, LOS ANGELES TIMES, Dec. 28, 1991.

The Bureau's registration population for service contract sellers, as of January 1, 2016, was 10,519 service contract sellers and 44 third-party service contract administrators.

A California Legislative and Regulatory History matrix can be found in Appendix C.

### **What is a Service Contract in California and Who are the Entities Involved?**

California BPC section 9855(a) defines a service contract as follows:

“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 an electronic set or appliance, as defined by this chapter, and their accessories or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, optical products, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” shall not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services. “Service contract” shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

A service contract must meet all of the terms and provisions of Song-Beverly, specifically California Civil Code (CCC) sections 1794.4 and 1794.41,<sup>18</sup> to ensure there is proper disclosure to the consumer of the coverage, such as commence and end dates, product identification, exclusions, cancellation provisions, etc. A contract that does not comply with these sections is not a legal offering in the State of California.

Service contracts are typically sold at the same time a new product is purchased, either through a brick and mortar retailer or an internet retailer. Service contracts may also be sold aftermarket through a source other than a retailer. It is also common for a manufacturer to offer a service contract “in the box” where the consumer may purchase a contract after they get home or through an aftermarket solicitation, prompted by the return of a product registration card. Service dealers who perform repairs may also offer a service contract once the repair is complete to provide consumers with later coverage. Companies outside the “retail chain of distribution” may also offer contracts with certain limitations. In addition, service contract administrators may direct sell to a consumer as an aftermarket offering. A sample service contract is found in Appendix D.

BPC section 9855(b) defines a service contract administrator as follows:

“Service contract administrator” or “administrator” means a person 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 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.

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<sup>18</sup> Cal. Bus. & Prof. Code § 9855.5 (“A service contractor shall comply with the provisions of Sections 1794.4 and 1794.41 of the Civil Code.”).

A service contract administrator shall not be an obligor on a service contract unless all service contracts under which the service contract administrator is obligated to perform are insured under a service contract reimbursement insurance policy.

BPC section 9855(c) defines a service contract seller as:

- (1) "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.
- (2) "Service contract seller" or "seller" also means a third party, including an obligor, who is not the seller, manufacturer, or repairer of the product. However, a third party shall not be an obligor on a service contract unless the obligor obtains a service contract reimbursement insurance policy for all service contracts under which the third party is obligated under the terms of a service contract.
- (3) "Service contract seller" or "seller" shall not include the following:
  - (A) A bank or bank holding company, or the subsidiary or affiliate of either, or a financial institution, licensed under state or federal law, selling or offering to sell a service contract unless that entity is financially and legally obligated under the terms of a service contract.
  - (B) An electrical device manufacturer or electrical contractor who constructs, installs, or services electrical devices, which include any unit of an electrical system intended to carry electrical energy as part of a building's electrical system, including raceways, conductors, invertors, conduit, wires, switches, or other similar devices.

BPC section 9855(e) defines a service contractor as:

"Service contractor" means a service contract administrator or a service contract seller.

BPC section 9855(g) defines an obligor as:

Obligor is the entity financially and legally obligated under the terms of a service contract.

## California Requirements vs. Other States' Requirements

### California Registration Requirements and Enforcement

California law requires that all service contract administrators and service contract sellers (including third party obligors) obtain and maintain a registration with the Bureau.<sup>19</sup> Service contractors who register with the Bureau as required are exempt from all provisions of the Insurance Code unless the BPC expressly provides otherwise.<sup>20</sup> A registered service contract administrator who is an obligor may also sell contracts without having to obtain an additional service contract seller registration.<sup>21</sup>

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<sup>19</sup> Cal. Bus. & Prof. Code § 9855.1(a) (indicating this requirement in the negative by providing that, "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.").

<sup>20</sup> Cal. Bus. & Prof. Code § 9855.1(b).

<sup>21</sup> Cal. Bus. & Prof. Code § 9855.15.

California registration requirements for sellers and administrators consist of:

- A completed application;
- Registration Fee – currently \$75 per location;
- A copy of the proposed service contract form;
- A certificate of qualification filed with the California Secretary of State if the business is outside the state (this does not include internet sellers);
- The current value of the service contracts in force, unless covered by a service contract reimbursement policy; and
- Evidence of financial backing – one of the following:
  - Form 10-K or 20-F required by the Securities and Exchange Commission.
  - Service contract reimbursement insurance policy (required for all contracts that are administered by a third party administrator or the obligations are met by a third party obligor).
  - Evidence of a funded escrow account equal to a minimum of 25 percent of deferred revenues from the service contracts in force.
  - Most recent audited financial statement showing a net worth of not less than \$100,000,000.<sup>22</sup>

All locations that issue, sell, or offer for sale (including internet sites) service contracts to California consumers are required to obtain and maintain a valid registration.

Registrations are issued for a one year timeframe and renew annually.<sup>23</sup> The current renewal is set at \$75 per location.<sup>24</sup> Evidence of financial backing is also required to be updated annually.

A service contractor is required to file its service contract forms prior to their use.<sup>25</sup> Bureau staff review contracts for compliance with CCC sections 1794.4 and 1794.41 (Song-Beverly), that there is appropriate evidence of financial backing, and that the appropriate registration has been obtained for each entity required to be registered.

The Bureau is authorized to deny, suspend, revoke, or place on probation 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:

- Any conduct that constitutes fraud or dishonest dealing.
- Conviction of a crime that has a substantial relationship to the qualifications, functions, and duties of the service contractor.
- Assisting in or abetting the violation of, or conspiring to violate, any provision of article 4.5, of BPC chapter 20, regulating service contractors, or of regulations adopted under that article.<sup>26</sup>

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<sup>22</sup> Cal. Bus. & Prof Code § 9855.2; 16 Cal. Code Regs. § 2757.

<sup>23</sup> Cal. Bus. & Prof. Code § 9873(a)(1).

<sup>24</sup> 16 Cal. Code Regs. § 2760(d).

<sup>25</sup> Cal. Bus. & Prof Code § 9855.3(a); 16 Cal. Code Regs. § 2758.5.

<sup>26</sup> Cal. Bus. & Prof Code § 9855.7.

The Bureau also has the authority to issue citations, which include a monetary fee, for the following violations:

- Failure to file a service contract with the Bureau as required by BPC section 9855.3(a) or any rule adopted thereunder.
- Failure to comply with the service contract disclosure provisions of Song-Beverly as set forth in CCC sections 1794.4 and 1794.41.<sup>27</sup>
- Violation of any regulation adopted under BPC article 4.5.
- Making or authorizing statements or advertisements which are untrue or misleading; or making false promises of a character likely to influence, persuade, or induce a customer to purchase a service contract as proscribed by BPC chapter 20.<sup>28</sup>

There is an appeal process in place for citations. They may either be appealed to a citation review conference which is decided at the Bureau Chief's level, or they may be appealed to an administrative law judge under the California Administrative Procedure Act.<sup>29</sup>

Citations are issued with penalties on a graduated scale as follows:

First citation:	\$100-\$500
Second citation (within 1 year):	\$500-\$1,000
Third citation (within 2 years):	\$1,000-\$2,000
Fourth citation (within 2 years)	\$1,000-\$2,000
The Fourth citation may also result in revocation, suspension or probation. <sup>30</sup>	

#### California Department of Insurance

The California Department of Insurance (CDI) has specific jurisdiction over Home Protection Contracts and Portable Electronic Device Insurance. CIC section 12740(a) provides the following definition:

“Home protection contract” means a contract or agreement whereby a person, other than a builder, seller, or lessor of the home which is the subject of the contract, undertakes for a specified period of time, for a predetermined fee, to repair or replace all or any part of any component, system or appliance of a home necessitated by wear and tear, deterioration or inherent defect, arising during the effective period of the contract, and, in the event of an inspection conducted pursuant to subdivision (b) of Section 12761, by the failure of that inspection to detect the likelihood of any such loss.

CIC section 1758.69(d)(1)(A) defines “portable electronics” as:

Personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations,

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<sup>27</sup> Cal. Bus. & Prof Code § 9855.5.

<sup>28</sup> Cal. Bus. & Prof Code § 9855.8(a).

<sup>29</sup> Cal. Bus. & Prof Code §§ 9855.8(b)(3) & (4).

<sup>30</sup> 16 Cal. Code Regs. § 2771.

automatic answering devices, their accessories, and service related to the use of those devices.

CIC section 1758.69(e)(1) defines the insurance covering these products as:

"Portable electronics insurance" means a contract providing coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable perils.

CIC section 1758.69(e)(2)(A) exempts service contracts on portable electronic devices under the Bureau's regulation as follows:

"[p]ortable electronics insurance" does not include ... [a] service contract governed by Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of the Business and Professions Code.

### **Other State Models**

Other states have taken different approaches to the regulation of service contracts on consumer goods. Following are examples of some of these different approaches:

#### Exemption States

States such as Tennessee and Pennsylvania have simply chosen to define what constitutes a service contract and statutorily deregulate the product as otherwise qualifying as insurance. For example, Tennessee's law provides as follows:

(a) The marketing, sale, offering for sale, issuance, making, proposing to make and administration of a service contract shall not be construed to be the business of insurance and shall be exempt from regulation as insurance pursuant to this title [the state's insurance code].

(b) For purposes of this section, "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the service, repair, replacement or maintenance of property or indemnification for service, repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, road hazard and emergency road service. "Service contract" shall include motor vehicle extended service contracts and agreements. Service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling.<sup>31</sup>

#### Passively Regulated States

States such as New Jersey and Ohio do not actively regulate service contracts. They have chosen to define service contract and set forth requirements for companies engaging in the service contract business, but do not impose any affirmative duties on a service contract obligor to register or file with a state agency. New Jersey's law essentially mimics the Model Act with the exception of there being no registration.<sup>32</sup>

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<sup>31</sup> Tenn. Code Ann. § 56-2-126. The Pennsylvania Insurance Code includes a virtually identical statute at 40 Pa. Cons. Stat. Ann. § 477f.

<sup>32</sup> N.J. Stat §§ 56:12-86, et seq.

Ohio law, similar to that of Tennessee, defines and exempts a service contract from regulation as insurance, but only as long as the service contract obligor maintains insurance backing.<sup>33</sup>

### Regulated States

Other states, like California, have a detailed regulatory framework in place that requires registration, disclosures, financial backing, etc. These state laws are based upon the Model Act, but have some variations in them.

### Comparison of Model Act with California Regulation

California did not adopt the Model Act when it came to the service contract regulation on products under the Bureau's scope of authority; however, in comparing the Model Act with the Bureau's operative statutes and regulation, the following are noted:

- The Model Act is intended for inclusion in a state's insurance code as administered by the state's insurance regulatory authority. In California, regulation of service contracts on consumer goods is by way of the BPC, Song-Beverly, and Bureau regulations, all administered by the Bureau.
- The Model Act is more general and applies to "property" where California statute, BPC section 9855, provides a listing of specific items.
- The Model Act does not regulate contracts sold on items with a purchase price of less than \$100. California has no price minimum for products covered under service contracts.
- The Model Act specifically excludes "maintenance agreements." In contrast, California law allows for maintenance only service contracts to be regulated by the Bureau and does not prohibit labeling an offering as a "maintenance agreement."
- Song-Beverly requires that a service contract be delivered to the consumer within 60 days of purchase. The Model Act states only "within a reasonable time from the date of purchase."
- The Model Act requires the insurer's name and address to be listed for insured contracts, along with language indicating that the contract holder is entitled to make a claim directly against the insurance company if the service contractor fails to pay or provide service on a claim within 60 days after proof of loss has been filed.
- For third-party obligors, California only permits a service contractor to purchase a reimbursement insurance policy to demonstrate financial backing. The Model Act includes this requirement as well as options to demonstrate financial backing, such as permitting a contractor to maintain a funded reserve along with a

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<sup>33</sup> Ohio Rev. Code Ann. 3905.423.

financial security deposit in trust with the state. For service contractors otherwise, the financial alternatives allowed for demonstrating financial backing are as follows:

Type of Backing	Model Act	California
Reimbursement Insurance Policy	✓	✓
Escrow Account	N/A	25% of in-force contracts
Financial Security Deposit (surety bond, securities, cash, letter of credit) with the insurance commissioner and a funded reserve account	✓	N/A
Maintain a net worth of not less than \$100 million	✓	✓
10-K or 20-F filing with Securities & Exchange Commission showing net worth greater than sum of deferred revenues from service contracts	N/A	✓



# Trends and Perceptions



The Working Group has compiled input concerning the environment of the industry by examining past research from a variety of sources. Some of the sources drawn on were the *Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2014 Sunset Review* prepared by CPS HR Consulting, the *2014 National Warranty Survey* conducted by Mason-Dixon Polling & Research, Inc., and the *1999 Service Contract Industry in California* report. These studies give valuable input concerning the prevailing perceptions of consumers to the industry, consumer sentiment regarding service contracts, and the industry's views and recommendations on the efficacy of regulation.

### Consumer Perception of Service Contracts

As part of the *Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2014 Sunset Review*, a consumer survey was conducted by CPS HR Consulting and covered various topics within the scope of the Bureau's jurisdiction, including service contracts. This survey yielded the following information:

- In cases where a service contract was not purchased, the reasons given by consumers surveyed were the cost of the contract and the product quality and reliability did not warrant a contract.
- In cases where a service contract was purchased on items under the Bureau's jurisdiction:
  - An average of 66.1% consumers surveyed used the service contract they purchased;
  - 90.8% of the consumers surveyed who had purchased a service contract were somewhat or very satisfied with the service contract process used; and
  - 90.2% of the consumers surveyed were satisfied with the product repair or replacement.
- 81% of the consumers surveyed felt it was somewhat or very important that service contracts for consumer products were under the consumer protection role of the California Department of Consumer Affairs.

The complete survey can be found in Appendix E.

In November 2014, a *National Warranty Survey* was commissioned by the Service Contract Industry Council and conducted by Mason-Dixon Polling & Research, Inc. The results of that survey were as follows:

- 67% of the consumers surveyed agreed that they would rather "spend a little more money if it saved them time."
- 71% of the consumers surveyed agreed that it was worth it to pay a little more to know that they "did not have to deal with the hassles of repair."
- The main reasons listed for purchasing extended warranties were:
  - Avoid a big, unexpected expense
  - Avoid the hassle of repairs
  - Feel the policy will pay out more than it cost to purchase
  - Peace of mind / reduce stress or worry
- 49% of the consumers surveyed who had purchased a service contract were very satisfied with their decision to purchase and 35% were somewhat satisfied.

The complete survey can be found in Appendix D.

## Industry Comments and Recommendations

In addition, the *Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2014 Sunset Review* also contained recommendations garnered from interviews with service contract industry members. Following are excerpts from that report:

- The most popular, though not only, way to offer a service contract may be as an obligor. The obligor buys a contracted liability insurance policy (CLIP) to ensure against repair or replacement loss. Service contract administrators are obligors and service contract sellers may also be, but don't have to be.
- Nationally, most states regulate service contracting firms as insurance entities or not at all. As a result, California is out of step with the rest of the country. This issue starts with the definition of a service contract. These contracts typically cover personal property or consumer goods, not commercial services. California's definition follows a prescriptive laundry list of products and services that changes often.<sup>34</sup>
- Except for California and Florida, most states have adopted the National Association of Insurance Commissioners (NAIC) model for service contracts. Also, only California and Florida license individual locations like retail stores which sell service contracts, such as large electronic appliance store chains, but don't view themselves as service contractors. However, it is recognized these retail licenses generate valuable revenue for the state and probably won't be eliminated.
- A problem for the industry and California consumers is the Bureau's interpretation of the Song-Beverly Act. The Act specifies that a clear description of the product is needed to file a claim. The Bureau currently interprets this to mean serial numbers are needed to approve a claim. This puts a burden on the consumer if they failed to register the serial number with the company. According to the industry official, the obligor does not care and generally will not deny a claim for the lack of serial numbers. In general, there is no claims adjustment, just replacement because it often costs less to replace than repair. However, the industry may decide to repair instead if they reach a cost or size threshold.
- There have been discussions about service vendors undergoing background checks because they provide services in the home.

## Service Contract Offerings – Current and Future

Initially, service contracts were for the repair of items which failed to perform as intended, and were geared towards "big-ticket" items that were of a repairable nature. As the industry shifted to offering service contracts on a variety of items, including less expensive products, the offerings moved from covering repair to offering a comparable replacement product and, in some instances, a refund of the price for a comparable replacement. In a recent review of 176 contracts filed with the Bureau over a six-month period, 171 contracts had either repair or replacement clauses, four contracts contained replacement only causes, and only one contract was for repair-only.

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<sup>34</sup> Other states use a more generalized, stable definition. In most states, auto and home appliance warranties and consumer goods are covered by the state insurance department. However, while many states regulate the industry through their department of insurance, service contracts are not classified as insurance products in most states.

The Bureau has received a number of offerings for products outside its jurisdiction for items such as area rugs, shoes, orthotic insoles, and home alarm systems, among other items. While these contracts must still meet CCC requirements that cover “consumer products,” they do not fall under the Bureau’s purview for registration and the Bureau has no authority for complaint handling or enforcement for these offerings.

The CDI has also received a submission for coverage of consumer drones. Based on the nature of the offering, it was deemed to be insurance, but it is likely that the Bureau will see offerings for these devices in a service contract.

It is evident that the service contract market will continue to grow based on these expanded offerings. As new products are developed, technology advances, and the industry perceives an opportunity to offer contract coverage on existing products that have not traditionally been in the service contract realm, the range of contracts and coverage options will also continue to grow.

The industry views this as the most problematic aspect of California’s law and the most significant difference between California’s regulation of the industry and the rest of the country. California’s list of products within the definition of a service contract is a patchwork and several industry stakeholders recommend that the definition be expanded to reference the general definition for consumer goods used in the Magnuson-Moss Warranty Act. Removing the list would bring California in line with the treatment of the industry by the rest of the states, whereas today California limits the definition to a specific list of products.



# Working Group Recommendations





## 1. Further Review the Bureau's Jurisdiction of Various Consumer Products

When first placed under the Bureau's jurisdiction, service contracts covered electronics and major home appliances. Having personnel experienced in the repair of these items was of great assistance in determining if the repairs performed under the service contract were in keeping with industry standards. As the Bureau's jurisdiction expanded, this no longer held true. For example, the Bureau has no expertise in the repair of jewelry products.

The Bureau's regulation of service contracts has incrementally expanded over time from electronic and appliance products to jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, optical products, and home health care products. In addition, the Bureau is frequently sent service contracts for review that fall outside the Bureau's jurisdiction and therefore, companies are not obligated to meet service contract requirements of the BPC that are required if the associated product were, for instance, an appliance. While these offerings are subject to the provisions of Song-Beverly, they are deemed a civil matter and the only consumer recourse is via the court system. For example, a service contract for a water heater (a product not under the Bureau's jurisdiction) can be provided by a company without the need to meet financial backing requirements and could close its doors the day after selling a service contract to a consumer.

Other states, however, whether by adopting the Model Act or by enacting other legislation, regulate all consumer products and do not distinguish consumer protections for varying types of products.

**Working Group Recommendation:** The current jurisdiction of the Bureau should be discussed in detail during its next Sunset Review process. The Legislature should consider removal of the list of specific products from BPC section 9855(a) in favor of "consumer products with the exclusion of vehicles." Consumer products could then be defined as, "tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business, educational, governmental, or research purposes."

An additional comment from some members of the group was that home protection insurance or protection plans oversight should be moved from CDI to the Bureau. However, such a significant change would limit plan coverages to device failure for traditional service contract reasons and not provide protection for natural events such as floods.<sup>35</sup>

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<sup>35</sup> Several states have adopted this form of regulation: 1) Virginia Department of Agriculture and Consumer Services regulates service contracts on consumer products; 2) Oregon Construction Contractors Board regulates home warranties (a fairly recent move from the Division of Insurance regulating these products); 3) Texas Real Estate Commission regulates whole home warranties and the Texas Department of Licensing and Regulation regulates service contracts on consumer goods.

## 2. Ensure Product Cancellation of Coverage Consistency

Song-Beverly requires service contracts for a used motor vehicle, a home appliance, or a home electronic product to provide for cancellation by a consumer for a full refund (less any claims) within the first 30 days. For all other consumer products, the consumer is entitled to 60 days in which to cancel for a full refund (less any claims). When the law was created, the majority of service contracts were sold for appliances and electronic equipment, however the market has shifted in contract offerings to many other products. There does not appear to be a reason to separate used vehicles, appliances, and electronics<sup>36</sup> from the other service contract offerings. Many companies have opted to provide for a 60-day cancellation clause for all products so that they may use standardized contract language.

CCC section 1794.41(a)(4), within Song-Beverly, states:

(4) The contract shall be cancelable by the purchaser under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, or for a vehicle service contract at the obligor's option as determined at the time of cancellation, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

(B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, or for a vehicle service contract at the obligor's option as determined at the time of cancellation, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars (\$25), whichever is less.

**Working Group Recommendation:** Amend the statute to remove the references to a 60-day cancellation provision and standardize the “free look” period for all products at 30 days. This provision should be effective for all programs started after a target date so that currently utilized contracts are not required to be resubmitted.

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<sup>36</sup> The Bureau has no jurisdiction over vehicles or service contracts associated with them.

### 3. Update Bureau Review and Labeling of Service Contracts

BPC section 9855.3(a) states:

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.

BPC section 9855.5 states:

A service contractor shall comply with the provisions of Sections 1794.4 and 1794.41 of the Civil Code.

CCC sections 1794.4 and 1794.41 (Song-Beverly) provide the requirements for the contents and disclosures in service contracts. By viewing all contracts prior to being used, the Bureau is able to ensure compliance with statutory requirements before any contracts are actually sold.

As the service contract industry has evolved, contract offerings have become more complex. Changes to the amount of coverage (e.g. replacement in lieu of repair), the introduction of new product technology, changes in laws related to the industry, and updated marketing strategies to promote sales have increased the amount of available offerings to consumers. With the increased volume of contracts available, the level of filings and workload associated with the review and tracking of contracts has grown significantly.

In reviewing dozens of contracts each month, one of the primary challenges comes with determining:

- Which contracts are currently in force;
- Which contract submissions are considered “replacements” for existing contracts;
- What amendments have been made to a contract and the effective date(s);
- Whether there may be concurrent versions of contracts in force;
- The point at which a program is no longer being offered;
- The point at which there are no longer contracts in force under a program; and
- Whether the contract is a partial submission (e.g., updated declaration pages) where the associated contract is not identified.

Often, different contracts bear the same form number and there may or may not be a revision date on the contract to distinguish it from other filings. To add to the dilemma, retailers provide filings of contracts which do not correspond with what is on file by their administrator and in some instances are offering contracts for an obsolete program.

**Working Group Recommendation:** Update existing statutes/regulations to require service contractors to print a unique form number and revision date on all contract filings to ensure straightforward identification of contracts. Specifically, the Working Group recommends updating statute as follows:

BPC 9855.3. Service Contract on File with Director

(a) The service contract form, along with all documents incorporated by reference into the contract, to be issued by the service contractor shall be filed with the director by the service contractor no later than 30 days prior to its use.

(1) The term “incorporated by reference” shall mean all documents referred to in the contract that are not a part of the body of the contract.

These can include documents such as: invoices, declaration pages, sales receipts, etc.

(2) All contracts must be identified by a unique form number and date of last revision.

(3) If, in the opinion of the Bureau, the submitted contract is unjust, unfair, inequitable, misleading, or deceptive,<sup>37</sup> the Bureau may reject the offering.

(A) The Bureau may adopt rules to objectively quantify these terms.

(4) Once submitted for review, no further changes may be made to the text of the contract without resubmission to the Bureau.

CDI regulations may contain some helpful provisions when drafting legislative language on these matters. For example, 10 Cal. Code Regs. § 2211 provides as follows:

Every document submitted pursuant to this Article, except rate schedules and actuarial memoranda, must have a form number in the lower left-hand corner of each page. The form number must be different from any other form number on any document previously filed with or approved by the Commissioner for that insurer. A revised version of a previously filed or approved document which contains any change whatsoever (subject to Section 2202(d) of this Article) is not the same form and its issuance is unlawful unless the revised version is properly submitted and filed or approved with its own unique form number.

The Working Group discussed other states' criteria for reviewing forms. For example, Virginia's service contract law, VA Code § 38.2-2623(B), states:

“The provider or its representative shall not in its service contracts or literature make, permit or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a service contract.”

In addition, Florida disapproves an insurance policy form if it: (a) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract. (b) Has any title, heading, or other indication of its provisions which is misleading. (c) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible. (d) Contains provisions that are unfair or inequitable or encourage misrepresentation.<sup>38</sup> Additional discussion may be needed to determine when regulatory changes will be necessitated to further define “unjust, unfair, inequitable, misleading, or deceptive”.

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<sup>37</sup> This is the standard used by CDI in determining if a policy should be approved [Cal. Ins. Code § 795.5].

<sup>38</sup> Fla. Stat. § 627.411(1)

#### 4. Update Financial Backing Requirements

All service contracts sold in California are required to hold some form of financial backing. The intent of this is to ensure that the obligor is capable of fulfilling their contractual obligations.

There are currently four means by which a service contract may be secured. These are:

- An audited financial statement showing a net worth of the company of greater than \$100 million.
- A Form 10-K, or equivalent if a foreign company, showing net worth of more than the deferred revenues from the service contracts in force.
- A service contract reimbursement policy.
- A secured escrow account holding at least 25% of the deferred revenues from the service contracts in force.

In practice, these options leave smaller, privately-held companies with only a single option (the escrow account) by which they can back sold contracts. The Form 10-K option is available only to publicly-traded companies and insurance companies will not issue policies to cover relatively smaller numbers of contracts.

Initially, many financial institutions were willing to facilitate secured escrow accounts; however, due to restrictions placed on banks as to what they could do with the deposited funds, many institutions have ceased to offer these accounts.

Until recently, there was only one bank that still offered these escrow accounts. The Bureau has recently been informed that this institution will no longer be offering these accounts to new depositors. This institution has, however, stated that it will continue to administrate the current accounts. With the withdrawal of this last institution, there is currently no avenue by which a smaller, privately-held company may secure financial backing and provide self-administrated contracts.

**Working Group Recommendation:** The working group discussed a number of options that may be explored, along with challenges relating to each alternative. There are numerous tradeoffs to each of these options. For example, some bolster competition in the industry and enable smaller business models to succeed (competition enabling the reduction in price of these contracts), while others ensure solid vehicles to ensure claims are addressed regardless of the status of the obligor. Further discussion and debate during the Bureau's sunset review should evaluate the following alternatives:

- Certified financial statement to demonstrate a company's positive net worth.
  - This option will allow companies to submit financial statements certified by the company officers stating the net worth of the company. This net worth can then be used to complete the "net worth test".<sup>39</sup> This method will not be as costly as the independent audit, but is subject to a higher possibility of fraud and error.
- Independent audit to demonstrate a company's positive net worth.
  - Audited balance sheets and income statements would be used in much the same way as the above option, but certified by an independent certified public accountant (CPA).

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<sup>39</sup> 16 Cal. Code Regs. Section 2757.2

- This option is more expensive to the company than the above described method, but the independent nature of the audit decreases the likelihood of fraud or error and holds the CPA liable both to the Bureau and to the California Board of Accountancy.
- A security deposit and a funded reserve account.
  - This option places funds into a reserve account with a member bank of the Federal Reserve, whose deposits are insured by the Federal Deposit Insurance Company (FDIC) that can be used to ensure that the consumer is afforded a level of protection.
  - There can be a requirement that the account be separated from the company's other accounts and identified as for the benefit of California contract holders. This method is described in detail in the Model Act.
  - In the event of a large payout of the covered service contracts, the funds can be dispensed from the reserve account. This will ease the burden on the obligated institution.
  - It is important to note that, in the event of a complete dissolution of the obligor, there is no guarantee that the reserve account will not be seized by a bankruptcy receiver for the purpose of paying other debts. Furthermore, while the security deposit will be held in reserve solely for the purpose of reimbursement to the consumers, the Bureau will be required to coordinate this disbursement either directly or by contracting with an independent third-party.
- Not allowing for options other than a service contract reimbursement policy, a Form 10-K showing a net worth greater than the amount of deferred revenues, or an audited financial statement of greater than \$100 million.
  - An opinion was expressed that it may be favorable not to allow smaller and privately-held companies to administer their own contracts. The risk to consumers associated with allowing these business entities to issue and back their own contracts may be untenable. These businesses will still be able to offer third party administrated contracts.
  - This option would be a restriction on smaller businesses and create an inequitable marketplace. It will stifle competition from legitimate companies that may have particular expertise in the product to be covered.

## 5. Create a Clearer Delineation between Service Contracts and Insurance

### Regulatory Overlap

Current law exempts service contracts regulated by the Bureau from regulation by CDI; however, there are areas where regulation can overlap due to ambiguities in the law. Consumers are afforded options when it comes to purchasing protection for their products, but depending on whom they purchase protection from and what the protection entails, this can make determining the proper regulatory oversight difficult.

When regulation of service contracts was first implemented by the Bureau, the products to be covered by service contracts were limited to appliances and electronics. Service contract sellers were limited to the retail chain of distribution (i.e. manufacturer, retailer, or product repair business). In time, however, the law was extended to additional products and additional business types were allowed to offer service contracts, namely, third party obligors that were outside of the retail chain of distribution.

Service contracts on appliances, for example, may be offered at point of sale or after market. These are typically offered by a retailer, manufacturer, or servicer; however, current law does not limit who may offer a service contract, as long as:

- The covered products fall within the scope of the Bureau's jurisdiction;
- Financial obligations are met;
- Contracts comply with the requirements of Song-Beverly; and
- The company is properly registered with the Bureau.

Coverage for appliances may also be offered as part of a home protection contract, which is an insurance product under the Insurance Code. These contracts require licensure and oversight by the CDI.

In the same light, consumers may also purchase a service contract on portable electronic devices, or may purchase portable electronic insurance. Both of these offerings may be available at a retailer at the time of purchase, or may be offered aftermarket to the consumer, sometimes via mail or phone solicitation, and many companies (e.g., mobile device carriers) will offer both types of coverage.

### Statutory Definitions – Insurance Code

California Insurance Code (CIC) section 12740(a) provides the following definition for establishing the jurisdiction of the CDI in this area:

“Home protection contract” means a contract or agreement whereby a person, other than a builder, seller, or lessor of the home which is the subject of the contract, undertakes for a specified period of time, for a predetermined fee, to repair or replace all or any part of any component, system or appliance of a home necessitated by wear and tear, deterioration or inherent defect, arising during the effective period of the contract, and, in the event of an inspection conducted pursuant to subdivision (b) of Section 12761, by the failure of that inspection to detect the likelihood of any such loss.

CIC section 12741(b) states that this part [CIC section 12741] shall not apply to:

Any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired or provided replacement of that

appliance, system or component at the time of, or prior to issuance of the contract, guarantee, or warranty; and, provided, further, that the person issuing the service contract, guarantee, or warranty does not engage in the business of a home protection company.

CIC section 1758.69(d)(1)(A) defines “portable electronics” as:

Personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, their accessories, and service related to the use of those devices.

CIC section 1758.69(e)(1) defines the insurance covering these products as:

"Portable electronics insurance" means a contract providing coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable perils.

CIC section 1758.69(e)(2)(A) exempts service contracts on portable electronic devices under the Bureau’s regulation as follows:

“[p]ortable electronics insurance” does not include ... [a] service contract governed by Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of the Business and Professions Code.

#### Statutory Definitions – Business & Professions Code and Civil Code

Business & Professions Code (BPC) section 9855(a) defines a service contract as:

“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 an electronic set or appliance, as defined by this chapter, and their accessories or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, optical products, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” shall not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services. “Service contract” shall not include a contract which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

BPC sections 9801(h) and 9801(i) define electronic set and appliances as follows:

"Electronic set" includes, but is not limited to, any television, radio, audio or video recorder or playback equipment, video camera, video game, video monitor, computer system, photocopier, or facsimile machine normally used or sold for personal, family, household, or home office use.

"Appliance" or "major home appliance" includes, but is not limited to, any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher,



trash compactor, or room air-conditioner normally used or sold for personal, family, household, or home office use, or for use in private motor vehicles.

California Civil Code (CCC) section 1791(o) defines service contract as:

“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.

CCC sections 1794.41(b) and 1794.41(c) state:

Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.  
If any provision of this section conflicts with any provision of Part 8 (commencing with Section 12800) of Division 2 of the Insurance Code, the provision of the Insurance Code shall apply instead of this section.

#### Deciphering Offerings under Existing Law

A service contract subject to Bureau authority must cover a product listed in BPC section 9855, and must meet the contractual coverage criteria for a specified duration and provisions for maintenance, repair or replacement.

If the contract language states that it is insurance, it is deemed insurance and not a service contract. In addition, although some individual appliances are subject to Bureau regulation, the nature of a contract that covers multiple household products and systems is in keeping with a home protection plan offering and not a service contract. An exception would be a consumer who purchases only Bureau-regulated products from a retailer at one point of sale or through a manufacturer offering protection solely for the products it manufactures.

A dilemma arises when coverage is provided on products regulated by both regulatory entities and there is no clear determination of insurance vs. service contract via the language in the document. The CCC does not specify what a service contract may include or exclude, as long as the limitations and exclusions are delineated in the contract.

Depending on the insurance coverage, offerings may provide for risk emanating from a peril outside of the functional design of a product. These would be risks that a normal service contract may exclude, such as theft, loss or damage due to external peril (weather, fire, etc.) However, current service contract law does not specifically prohibit such coverage and insurance law does not state that these offerings are only insurance in these circumstances. While both regulatory entities work together to decipher specific offerings, a more clear distinction and determination of whether an offering is a service contract or insurance—commensurate with the statutory and regulatory authority to regulate these offerings—is needed to provide appropriate licensure, enforcement, and consumer protection by both agencies.

**Working Group Recommendation:** Update existing statutes to ensure consumers and businesses can easily distinguish between service contract and insurance offerings. Specifically, update statutes as follows:

### Recommendations of General Agreement

- Add statutory language requiring that all offerings must identify whether they are a service contract offering or an insurance offering.
- Amend BPC section 9855(a) to remove the “but not limited to” provision from incidental payment of indemnity. This would remove the current ambiguity of the law that currently allows for perils that are usually associated with the concept of insurance.
- Add statutory language to further define accidental damage from handling as damage caused to the covered product while being used in a manner commensurate with the design of the product.
- Allow for the expansion of the incidental payment of indemnity section by regulatory change.

### Points of Debate within the Working Group

- **Blanket Coverage of Items by Class:**  
The service contract industry supports allowing service contracts that cover classes of products (e.g. televisions). The liability to the obligor would be limited by means of a specified dollar amount or number of repairs. This is currently not allowable by current practices due to the lack of specific identity of the covered product (a requirement of Song-Beverly). This model, however, is permissible as a home protection plan.
- **Third Party Obligors after Point of Sale:**  
There is ongoing debate over allowing third party obligors to sell contracts on multiple items after the point of sale under service contract laws.
- **Multiple Products Covered under One Contract at the Point of Sale:**  
This model is allowable under current law; however, debate was raised as to whether it should be classified as an insurance offering.

Due to the above-stated points of debate, this matter will require further discussion and should be monitored throughout the Bureau’s Sunset Review process.

## 6. Update Insurers' Notice Requirements to the Bureau

Service contracts that are financially backed by a reimbursement insurance policy may be affected by termination of the policy by either the policyholder or the insurer. While the BPC requires that these policies contain a provision that the Bureau shall be notified of termination, it does not prescribe at what point notification must occur, nor does it place a liability on the insurer for covering those contracts until notification has been fulfilled.

California BPC section 9855.4 states in part that:

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.

The Model Act offers the following language, which requires the mailing or delivering of that notice be executed before termination of a reimbursement can commence:

As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with [insert citation to the law that governs the termination of insurance contracts] has been mailed or delivered to the commissioner. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.

**Working Group Recommendation:** Update existing statute to require insurance companies to serve the Bureau Chief with notice prior to the termination of the reimbursement insurance policy. Specifically, the Working Group recommends updating statute as follows:

BPC section 9855.4:

(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. The reimbursement insurance policy shall not be terminated until a notice of termination has been mailed or delivered to the Chief of the Bureau. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts by providers prior to the date of termination.

## 7. Administrators' Annual Reporting Requirements

Currently, BPC section 9855.3(b) requires that a service contract administrator file a service contract reimbursement policy with its application for renewal. While this ensures that the contract has adequate financial backing, additional annual reporting requirements would improve consumer protection.

The administrator is required, under CCC section 2756(c), to disclose the name and address of all service contract sellers who sell or offer contracts administrated by the administrator with their initial application. Under CCC section 2758(b), administrators are required to maintain a listing of all retailers that sell contracts administrated by the administrator, however, it is not required that this list ever be reported beyond the initial application. Since the majority of administrators are located outside of California, it is not possible to do a physical audit or verification of those records. The tracking of who is authorized to sell an administrator's contracts is an important component of ensuring the legal offering of contracts and that retailers are properly registered to offer contracts to consumers.

In addition, contract programs are started and stopped at the discretion of the administrator in response to consumer needs, financial considerations, and the requirements of the administrator's business model. While BPC section 9855.3(a) requires filing a contract with the Bureau prior to the contract being sold, there exists no requirement to report to the Bureau when a contract is no longer being offered.

**Working Group Recommendation:** Update existing statutes to increase the annual reporting requirements of administrators. Specifically, the Working Group recommends updating statutes as follows:

Add BPC section 9855.3(d) to read:

On request from the Bureau, a service contract administrator shall provide a full listing of all retailers authorized to sell the administrator's contracts and a list of the form numbers of all contracts currently being sold. The administrator shall have no more than 30 days, from the date of service, to comply with this request.

The Working Group further recommends that this filing requirement be added to Government Code section 6254. This will exempt the submitted information from disclosure subsequent to a Public Records Act request.

## 8. Remove Single-Year Agreement Restriction between Manufacturers and Dealers

CCC section 1793.2(a)(1)(B) allows the manufacturer to enter into agreements with independent service dealers to fulfill the manufacturer's warranty obligations under Song-Beverly. This section includes a provision that the contract between the manufacturer and the independent service dealer may cover a period of no more than one year.

At the Working Group's request, Bureau staff conducted legislative history research on this provision and found the term limitation was added by SB 568 (Roberti, Chapter 416, Statutes of 1976). The Bureau was able to obtain committee analyses and correspondence from the State Archives on this bill. Based on the Bureau's review, the Bureau concluded that the reason for this provision is not explicitly stated in any of the material available; however, this restriction appears to have been added to create an opportunity in which the business relationships between the parties may be re-evaluated. Several other provisions were also added in this bill and many stakeholders expressed their support at the time.

Discussions among the Working Group have established a general consensus that this provision is unnecessary and may, in some instances, prove needlessly burdensome to both manufacturers and service dealers in the current business environment.

**Working Group Recommendation:** No consensus was achieved on this matter. Some Working Group members believed that this provision was a private contractual matter between the service dealer and the manufacturer and, as such, should not be restricted. It was suggested that statute be revised to read:

CCC section 1793.2(a)(1)(B):

As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work; however, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, do not preclude a good faith discount that is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. ~~The warranty service contracts authorized by this paragraph may not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.~~

Others in the working group expressed concern that this provision prevented the manufacturers from locking the service dealers into an unfair pricing model and should not be removed.

## 9. Other Considerations/Challenges

The general consensus of the Working Group is that if any change is made to current statutes, care must be taken that the change gives ample lead time to the industry to effect the change. The Working Group also recommends that grandfathering provisions be put in place so as to not unduly burden the Bureau or the industry by forcing the resubmission of all programs currently in use.

Further discussion may be needed to address other matters that were presented, but proved beyond the scope of the Working Group.

A concern has been voiced regarding service contractors being unable to fulfill a repair on an item due to the availability of parts from the manufacturer. CCC section 1793.03 requires manufacturers to provide parts and literature for three years if the wholesale price is \$50–\$99.99, and for seven years if the wholesale price is \$100 or more. In instances where the manufacturer either goes out of business or otherwise fails to supply the parts or literature, the service contractor may be liable for replacement of the product in lieu of repair. It was recommended that this provision of the CCC be adopted into the BPC.

Inconsistency between state and federal arbitration law was also addressed as a point of interest. If the contract administrator is outside of the State of California, arbitration is governed by federal law as a matter of interstate commerce. However, if the administrator is located inside of the state, California law holds precedence. This matter is being continually evaluated in the courts and should continue to be monitored throughout the Bureau's Sunset Review process.

Adhesion clauses in service contracts are also a matter that was briefly discussed. The Working Group was unable to form a consensus on how to address them; however, this matter may be addressed when considering the Working Group's suggestion regarding the Bureau's authority to reject offerings found to be unjust, unfair, inequitable, misleading, or deceptive. The matter should be monitored throughout the Bureau's Sunset Review process.

# Appendices





# Appendix A



**15 USC Ch. 50: CONSUMER PRODUCT WARRANTIES**

**From Title 15—COMMERCE AND TRADE**

**CHAPTER 50—CONSUMER PRODUCT WARRANTIES**

Sec.

2301.

Definitions.

2302.

Rules governing contents of warranties.

2303.

Designation of written warranties.

2304.

Federal minimum standards for warranties.

2305.

Full and limited warranting of a consumer product.

2306.

Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.

2307.

Designation of representatives by warrantor to perform duties under written or implied warranty.

2308.

Implied warranties.

2309.

Procedures applicable to promulgation of rules by Commission.

2310.

Remedies in consumer disputes.

2311.

Applicability to other laws.

2312.

Effective dates.

**§2301. Definitions**

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to

refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "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 (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

- (A) between a place in a State and any place outside thereof, or
- (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93–637, title I, §101, Jan. 4, 1975, 88 Stat. 2183.)

## REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

## SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–51, §1, Sept. 24, 2015, 129 Stat. 494, provided that: "This Act [amending section 2302 of this title and enacting provisions set out as notes under section 2302 of this title] may be cited as the 'E-Warranty Act of 2015'."

## SHORT TITLE

Pub. L. 93–637, §1, Jan. 4, 1975, 88 Stat. 2183, provided: "That this act [enacting this chapter and sections 57a to 57c of this title, amending sections 45, 46, 49, 50, 52, 56, and 58 of this title, and enacting provisions set out as notes under sections 45, 56, 57a, and 57b of this title] may be cited as the 'Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

## §2302. Rules governing contents of warranties

### (a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve

competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

- (1) The clear identification of the names and addresses of the warrantors.
- (2) The identity of the party or parties to whom the warranty is extended.
- (3) The products or parts covered.
- (4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.
- (5) A statement of what the consumer must do and expenses he must bear.
- (6) Exceptions and exclusions from the terms of the warranty.
- (7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.
- (8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.
- (9) A brief, general description of the legal remedies available to the consumer.
- (10) The time at which the warrantor will perform any obligations under the warranty.
- (11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.
- (12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.
- (13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

**(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract; electronic display of terms of warranty**

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by—

- (i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and
- (ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual—
  - (I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and
  - (II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the

location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.

**(c) Prohibition on conditions for written or implied warranty; waiver by Commission**

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

- (1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and
- (2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

**(d) Incorporation by reference of detailed substantive warranty provisions**

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

**(e) Applicability to consumer products costing more than \$5**

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

(Pub. L. 93–637, title I, §102, Jan. 4, 1975, 88 Stat. 2185; Pub. L. 114–51, §3(a), Sept. 24, 2015, 129 Stat. 494.)

## AMENDMENTS

**2015**—Subsec. (b)(4). Pub. L. 114–51 added par. (4).

## FINDINGS

Pub. L. 114–51, §2, Sept. 24, 2015, 129 Stat. 494, provided that: "Congress makes the following findings:

"(1) Many manufacturers and consumers prefer to have the option to provide or receive warranty information online.

"(2) Modernizing warranty notification rules is necessary to allow the United States to continue to compete globally in manufacturing, trade, and the development of consumer products connected to the Internet.

"(3) Allowing an electronic warranty option would expand consumer access to relevant consumer information in an environmentally friendly way, and would provide additional flexibility to manufacturers to meet their labeling and warranty requirements."

## REVISION OF RULES

Pub. L. 114–51, §3(b), Sept. 24, 2015, 129 Stat. 495, provided that:

"(1) In general.—Not later than 1 year after the date of the enactment of this Act [Sept. 24, 2015], the Federal Trade Commission shall revise the rules prescribed under such section [meaning section 102(b) of Pub. L. 93–637, which is classified to subsec. (b) of this section] to comply with the requirements of paragraph (4) of such section, as added by subsection (a) of this section [amending this section].

"(2) Authority to waive requirement for oral presentation.—In revising rules under paragraph (1), the Federal Trade Commission may waive the requirement of section 109(a) of such Act (15 U.S.C. 2309(a)) to give interested persons an opportunity for oral presentation if the Commission determines that giving interested persons such opportunity would interfere with the ability of the Commission to revise rules under paragraph (1) in a timely manner."

## §2303. Designation of written warranties

**(a) Full (statement of duration) or limited warranty**

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

**(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction**

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

**(c) Exemptions by Commission**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

**(d) Applicability to consumer products costing more than \$10 and not designated as full warranties**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93-637, title I, §103, Jan. 4, 1975, 88 Stat. 2187.)

## **§2304. Federal minimum standards for warranties**

**(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

**(b) Duties and conditions imposed on consumer by warrantor**

(1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full

(statement of duration)" warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards**

The performance of the duties under subsection (a) shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge**

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a) (1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions**

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93-637, title I, §104, Jan. 4, 1975, 88 Stat. 2187.)

**§2305. Full and limited warranting of a consumer product**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93-637, title I, §105, Jan. 4, 1975, 88 Stat. 2188.)

**§2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93-637, title I, §106, Jan. 4, 1975, 88 Stat. 2188.)

**§2307. Designation of representatives by warrantor to perform duties under written or implied warranty**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

(Pub. L. 93-637, title I, §107, Jan. 4, 1975, 88 Stat. 2189.)

**§2308. Implied warranties**



**(a) Restrictions on disclaimers or modifications**

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

**(b) Limitation on duration**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

**(c) Effectiveness of disclaimers, modifications, or limitations**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93–637, title I, §108, Jan. 4, 1975, 88 Stat. 2189.)

## **§2309. Procedures applicable to promulgation of rules by Commission**

**(a) Oral presentation**

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

**(b) Warranties and warranty practices involved in sale of used motor vehicles**

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93–637, title I, §109, Jan. 4, 1975, 88 Stat. 2189.)

## **§2310. Remedies in consumer disputes**

**(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures**

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such

procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

**(b) Prohibited acts**

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

**(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions**

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

**(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims**

(1) Subject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable**

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) applies) brought under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

**(f) Warrantors subject to enforcement of remedies**

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93-637, title I, §110, Jan. 4, 1975, 88 Stat. 2189.)

## REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsecs. (a)(3) and (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## §2311. Applicability to other laws

**(a) Federal Trade Commission Act and Federal Seed Act**

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act [7 U.S.C. 1551 et seq.] and nothing in this chapter shall apply to seed for planting.

**(b) Rights, remedies, and liabilities**

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

**(c) State warranty laws**

(1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

**(d) Other Federal warranty laws**

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the

making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93-637, title I, §111, Jan. 4, 1975, 88 Stat. 2192.)

## REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Acts, referred to in subsec. (a)(1), are defined in section 44 of this title.

The Federal Seed Act, referred to in subsec. (a)(2), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, as amended, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

## §2312. Effective dates

### (a) Effective date of chapter

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

### (b) Effective date of section 2302(a)

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

### (c) Promulgation of rules

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, title I, §112, Jan. 4, 1975, 88 Stat. 2192.)

# Appendix B



## SERVICE CONTRACTS MODEL ACT

### Table of Contents

Section 1.	Scope and Purposes
Section 2.	Definitions
Section 3.	Requirements For Doing Business
Section 4.	Required Disclosures—Reimbursement Insurance Policy
Section 5.	Required Disclosures—Service Contracts
Section 6.	Prohibited Acts
Section 7.	Recordkeeping Requirements
Section 8.	Termination of Reimbursement Insurance Policy
Section 9.	Obligation of Reimbursement Insurance Policy Insurers
Section 10.	Enforcement Provisions
Section 11.	Authority to Develop Regulations
Section 12.	Separability Provision

### Section 1. Scope and Purposes

#### A. The purposes of this Act are to:

- (1) Create a legal framework within which service contracts may be sold in this state;
- (2) Encourage innovation in the marketing and development of more economical and effective means of providing services under service contracts, while placing the risk of innovation on the providers rather than on consumers; and
- (3) Permit and encourage fair and effective competition among different systems of providing and paying for these services.

**Drafting Note:** This model assumes that service contracts are exempt from the insurance code.

#### B. This Act shall not apply to:

- (1) Warranties;
- (2) Maintenance agreements;
- (3) Commercial transactions;
- (4) Warranties, service contracts or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by [insert name of the state agency that regulates public utilities]; and
- (5) Service contracts sold or offered for sale to persons other than consumers.

#### C. Manufacturer's service contracts on the manufacturer's products need only comply with Sections 5A, 5D to 5N, 6 and 10, as applicable, of this Act.

**Drafting Note:** States should determine whether to totally exempt manufacturers' service contracts from this Act.

#### D. This Act shall not apply to service contracts:

- (1) Paid for with separate and additional consideration;

- (2) Issued at the point of sale, or within sixty (60) days of the original purchase date of the property; and
- (3) Where the tangible property has a purchase price of \$[insert monetary threshold] or less, exclusive of sales tax.

## Section 2. Definitions

As used in this Act:

- A. "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan and who is responsible for any filings required by the Act.
- B. "Commissioner" means the commissioner of insurance of this state.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- C. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes.
- D. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.
- E. "Manufacturer" means a person that:
  - (1) Manufactures or produces the property and sells the property under its own name or label;
  - (2) Is a wholly owned subsidiary of the person who manufactures or produces the property;
  - (3) Is a corporation which owns 100 percent of the person who manufactures or produces the property;
  - (4) Does not manufacture or produce the property, but the property is sold under its trade name label;
  - (5) Manufactures or produces the property and the property is sold under the trade name or label of another person; or
  - (6) Does not manufacture or produce the property but, pursuant to a written contract, licenses the use of its trade name or label to another person that sells the property under the licensor's trade name or label.
- F. "Mechanical breakdown insurance" means a policy, contract or agreement issued by an authorized insurer that provides for the repair, replacement or maintenance of property or indemnification for repair, replacement or service, for the operational or structural failure of the property due to a defect in materials or workmanship or to normal wear and tear.



- G. "Non-original manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts."
- H. "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.
- I. "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.
- J. "Provider" means a person who administers, issues, makes, provides, sells or offers to sell a service contract, or who is contractually obligated to provide service under a service contract such as sellers, administrators and other intermediaries.
- K. "Provider fee" means the consideration paid for a service contract in excess of the premium.
- L. "Reimbursement insurance policy" means a policy of insurance issued to a provider and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of non-performance by the provider. "All obligations and liabilities" include, but are not limited to, failure of the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract.
- M. "Service contract" means a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement or maintenance of property or indemnification for repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements.
- N. "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.
- O. "Warranty" means a warranty made solely by the manufacturer, importer or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

### Section 3. Requirements For Doing Business

- A. Service contracts shall not be issued, sold or offered for sale in this state unless the administrator or its designee has:
  - (1) Provided a receipt for the purchase of the service contract to the contract holder;

Service Contracts Model Act

- (2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and,
  - (3) Complied with this Act.
- B. All administrators of service contracts sold in this state shall file a registration with the commissioner on a form, at a fee and at a frequency prescribed by the commissioner.
- C. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:
- (1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or issued pursuant to [insert code section permitting surplus lines business] or;
  - (2)
    - (a) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the commissioner; and
    - (b) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000, consisting of one of the following:
      - (i) A surety bond issued by an authorized surety;
      - (ii) Securities of the type eligible for deposit by authorized insurers in this state;
      - (iii) Cash;
      - (iv) A letter of credit issued by a qualified financial institution; or
      - (v) Another form of security prescribed by regulations issued by the commissioner; or

Drafting Note: States allowing a letter of credit to serve as security should adopt a definition of "qualified financial institution." The definition in Section 3A of the Model Law on Credit for Reinsurance is the appropriate definition.

- (3)
  - (a) Maintain a net worth of \$100 million; and
  - (b) Upon request, provide the Commissioner with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least

\$100 million. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state.

- D. Premium Taxes:
- (1) Provider fees collected on service contracts shall not be subject to premium taxes.
  - (2) Premiums for reimbursement insurance policies shall be subject to applicable taxes.
- E. Except for the registration requirement in Section 3B, persons marketing, selling or offering to sell service contracts for providers that comply with this Act are exempt from this state's licensing requirements.
- F. Providers complying with this Act are not required to comply with other provisions of Chapter [cite rate regulation and other applicable state insurance statutes], except as specifically provided.

#### Section 4. Required Disclosures—Reimbursement Insurance Policy

Reimbursement insurance policies insuring service contracts issued, sold or offered for sale in this state shall conspicuously state that, upon failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

#### Section 5. Required Disclosures—Service Contracts

- A. Service contracts issued, sold or offered for sale in this state shall be written in clear, understandable language and the entire contract shall be printed or typed in easy to read ten point type or larger and conspicuously disclose the requirements in this section, as applicable.
- B. Service contracts insured under a reimbursement insurance policy pursuant to Section 3C(1) of this Act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty (60) days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the insurer.
- C. Service contracts not insured under a reimbursement insurance policy pursuant to Section 3C(1) of this Act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider shall also

Service Contracts Model Act

include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.

- D. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.
- E. Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.
- F. If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.
- G. Service contracts shall conspicuously state the existence of any deductible amount.
- H. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions or exclusions.
- I. Service contracts shall state the conditions upon which the use of non-original manufacturers' parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.
- J. Service contracts shall state any terms, restrictions or conditions governing the transferability of the service contract.
- K. Service contracts shall state the terms, restrictions or conditions governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen (15) days of the date of termination.
- L. Service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty (20) days of the date of mailing of the service contract or within at least ten (10) days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent (10%) penalty per month shall be added to a refund that is not paid within thirty (30) days of return of the contract to the provider. The applicable free-look time periods on service contracts shall only apply to the original service contract purchaser.
- M. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.
- N. Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

**Section 6. Prohibited Acts**

- A. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual or any other words descriptive of the insurance, casualty, guaranty or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to the effective date of this Act. However, a company using the prohibited language in its name shall conspicuously disclose in its service contracts a statement in substantially the following: "This agreement is not an insurance contract."
- B. A provider or its representative shall not in its service contracts or literature make, permit or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a service contract.
- C. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

**Section 7. Recordkeeping Requirements**

- A. Books and Records:
  - (1) An administrator shall keep accurate accounts, books and records concerning transactions regulated under this Act.
  - (2) An administrator's accounts, books, and records shall include:
    - (a) Copies of each type of service contract issued;
    - (b) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;
    - (c) A list of the provider locations where service contracts are marketed, sold or offered for sale; and
    - (d) Claims files which shall contain at least the dates, amounts and description of all receipts, claims and expenditures related to the service contracts.
  - (3) Except as provided in Section 7B, an administrator shall retain all records pertaining to each service contract holder for at least three (3) years after the specified period of coverage has expired.
  - (4) An administrator may keep all records required under this Act on a computer disk or other similar technology. If an administrator maintains records in other than hard copy, records shall be accessible from a computer terminal available to the commissioner and be capable of duplication to legible hard copy.

- B. An administrator discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.
- C. An administrator shall make all accounts, books and records concerning transactions regulated under this Act or other pertinent laws available to the commissioner upon request.

**Section 8. Termination of Reimbursement Insurance Policy**

As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with [insert citation to the law that governs the termination of insurance contracts] has been mailed or delivered to the commissioner. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.

**Section 9. Obligation of Reimbursement Insurance Policy Insurers**

- A. Providers are considered to be the agent of the insurer which issued the reimbursement insurance policy for purposes of [insert citation to the law that obligates an insurer for the acts of its agents, including the collection of moneys not forwarded]. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers.
- B. This Act shall not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement.

**Section 10. Enforcement Provisions**

- A. The commissioner may conduct investigations or examinations of providers, administrators, insurers or other persons to enforce the provisions of this Act and protect service contract holders in this state.
- B. The commissioner may take action which is necessary or appropriate to enforce the provisions of this Act and the commissioner's regulations and orders, and to protect service contract holders in this state.
  - (1) The commissioner may order a service contract provider to cease and desist from committing violations of this Act or the commissioner's regulations or orders, may issue an order prohibiting a service contract provider from selling or offering for sale service contracts, or may issue an order imposing a civil penalty, or any combination of these, if the provider has violated this Act or the commissioner's regulations or orders.
    - (a) A person aggrieved by an order issued under this paragraph may request a hearing before the commissioner. The hearing request shall be filed with the commissioner within [20] days of the date the commissioner's order is effective;

- (b) Pending the hearing and the decision by the commissioner, the commissioner shall suspend the effective date of the order; and
  - (c) At the hearing, the burden shall be on the commissioner to show why the order issued pursuant to this paragraph is justified. The provisions of [insert citation to statutes concerning hearings before the commissioner] shall apply to a hearing requested under this paragraph.
- (2) The commissioner may bring an action in [insert court] Court for an injunction or other appropriate relief to enjoin threatened or existing violations of this Act or of the commissioner's orders or regulations. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this Act or orders or regulations of the commissioner.
  - (3) A person in violation of this Act or orders or regulation of the commissioner may be assessed a civil penalty not to exceed \$[insert amount] per violation.
- C. The authority of the commissioner under this section is in addition to other authority of the commissioner.

**Drafting Note:** It is recommended that states review the enforcement procedures in their insurance laws and administrative procedure laws to ensure that adequate enforcement provisions are in place.

#### **Section 11. Authority to Develop Regulations**

The commissioner may promulgate regulations necessary to effectuate this Act.

#### **Section 12. Separability Provision**

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1995 Proc. 4th Quarter 11, 33, 998, 1027-1033 (adopted).*

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## SERVICE CONTRACTS MODEL ACT

These charts are intended to provide the readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings which are related to the NAIC model. Such guidance provides the reader with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has made an interpretation of adoption or related state activity based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This state page does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the laws cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional adoptions and subsequent bill status.

**SERVICE CONTRACTS MODEL ACT**

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**SERVICE CONTRACTS MODEL ACT**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a substantially similar manner. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** States that have citations identified in this column have not adopted the most recent version of the NAIC model in a substantially similar manner. Examples of Related State Activity include but are not limited to: An older version of the NAIC model, legislation or regulation derived from other sources such as Bulletins and Administrative Rulings.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. CODE §§ 8-32-1 to 8-32-12 (1997).	
Alaska		ALASKA STAT. § 21.03.021 (1968/2014) (Service contract is not insurance).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-1095 to 20-1095.10 (1982); ARIZ. ADMIN. CODE §§ 20-6-407 to R20-6-408 (1987).
Arkansas	ARK. CODE ANN. § 4-114-104 (2007/2009).	ARK. CODE ANN. §§ 4-90-501 to 4-90-512 (1993) (Motor vehicle service contracts).
California		CAL. INS. CODE §§ 12140 to 12311 (1935/2004) (Motor clubs); §§ 12800 to 12865 (2004/2010) (Motor vehicle service contracts); CAL. BUS. & PROF. CODE §§ 9855 to 9855.9 (1993/1998); CAL. CIV. CODE §§ 1791 to 1794.41 (1970/2004).

## SERVICE CONTRACTS MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Colorado		COLO. REV. STAT. §§ 12-61-602 TO 12-61-614 (1979/2007) (Home warranty service contracts); COLO. REV. STAT. §§ 42-11-101 to 42-11-108 (1989/2003) (Motor vehicle service contracts); COLO. REV. STAT. §§ 42-10-101 to 42-10-107 (1994) (Motor vehicle warranties); 3 COLO. CODE REGS. § 702-5:5-1-12 (2013) (Warranties and service contracts).
Connecticut	NO CURRENT ACTIVITY	
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. STAT. §§ 634.011 to 634.281 (1959/2005) (Motor vehicle service contracts); §§ 634.301 to 634.348 (1977/1999) (Home warranty); §§ 634.401 to 634.444 (1978/2005) (Service warranty); Memorandum 2011-04M (2011).
Georgia		GA. CODE ANN. § 33-7-6 (1960/2013); GA. COMP. R. & REGS. 120-2-47-.01 to 120-2-47-.14 (1989/2013) (Motor vehicle service contracts).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 481X-1 to 481X-12 (2000).
Idaho		IDAHO CODE ANN. §§ 41-4501 to 41-4529 (1988) (Motor clubs); §§ 49-2801 to 49-2810 (1993/2010) (Motor vehicle service contracts).
Illinois		215 ILL. COMP. STAT. 152/1 to 152/99 (1998/2013).

**SERVICE CONTRACTS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Indiana	NO CURRENT ACTIVITY	
Iowa		IOWA CODE §§ 516E.1 to 516E.15 (1985/2005); IOWA ADMIN. CODE r. 191-23.1 to 191-23.34 (1988/2001).
Kansas	NO CURRENT ACTIVITY	
Kentucky		806 KY. ADMIN. REGS. 5:050 to 5:060 (1997).
Louisiana		LA. REV. STAT. ANN. §§ 22:1751 to 22:1770 (1972/1983); §§ 22:1806.1 to 22:1806.9 (2009).
Maine		ME. REV. STAT. ANN. tit. 24-A, §§ 7101 to 7112 (2012); ME. REV. STAT. ANN. tit. 32, §§ 13221 to 13238 (1987/1989) (Home service contracts) BULLETIN 393 (2014).
Maryland		MD. CODE ANN., COM. LAW §§ 14-401 to 14-410 (1975/2002).
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	MINN. STAT. §§ 59B.01 to 59B.11 (2005).	
Missouri	MO. REV. STAT. §§ 385.200 to 385.220 (2007/2011) (auto); §§ 385.300 to 385.320 (2007).	MO. CODE REGS. ANN. tit. 20, § 200-18.030 (2012).
Mississippi		MISS. CODE ANN. §§ 83-61-101 to 83-65-125 (1995).
Montana		MONT. CODE ANN. §§ 61-12-301 to 61-12-315 (1931/1947) (Motor vehicle service clubs).

**SERVICE CONTRACTS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Nebraska		NEB. REV. STAT. §§ 44-3520 to 44-3526 (1990); §§ 44-3701 to 44-3721 (1981); 210 NEB. ADMIN. CODE § 58 (1994/2012) (Motor vehicle service contracts); BULLETIN CB-106 (2008).
Nevada		NEV. REV. STAT. §§ 690C.010 to 690C.330 (2000); §§ 696A.010 to 696A.360 (1971/2006) (Motor vehicle service clubs); NEV. ADMIN. CODE §§ 690C.010 to 690C.120 (2000).
New Hampshire		N.H. REV. STAT. ANN. §§ 415-C:1 to 415-C:12 (2005/2009).
New Jersey	NO CURRENT ACTIVITY	
New Mexico		N.M. STAT. ANN. §§ 59A-58-1 to 59A-58-18 (2002/2013).
New York	N.Y. INS. LAW §§ 7901 to 7913 (1997/2012).	N.Y. COMP. CODES R. & REGS. tit. 11, §§ 390.1 to 390.13 (2001/2003) (Reg. 155); Circular Letter 2006-19 (2006); Circular Letter 2009-19 (2009).
North Carolina		N.C. GEN. STAT. §§ 58-1-25 to 58-1-35 (1992/1995) (Motor vehicle service contracts and home service contracts).
North Dakota		N.D. CENT. CODE § 9-01-21 (2001) (Property service contract is not insurance).
Northern Marianas	NO CURENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. §§ 3957.01 to 3957.99 (1987) (Home warranty companies); § 3905.422 (2004) (A home service contract is not insurance).
Oklahoma		OKLA. STAT. tit. 36, §§ 3101 to 3112 (1973) (Motor vehicle service clubs); §§ 6601 to 6639 (1993/2014) (Service warranty); OKLA. STAT. tit. 15, §§ 141.1 to 141.32 (2012/2014) (service warranty).

**SERVICE CONTRACTS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Oregon		OR. REV. STAT. §§ 646.263 to 646.273 (1995/2005); §§ 742.390 to 742.392 (1995); OR. ADMIN. R. 836-200-0000 to 836-200-0060 (1996/2006).
Pennsylvania		40 PA. STAT. ANN. § 358 (2010).
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 2101 to 2122 (1961/1979) (Motor vehicle service contracts).
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	S.C. CODE ANN. §§ 38-78-10 to 38-78-120 (2000).	S.C. CODE ANN. §§ 39-61-10 to 39-61-200 (1987); S.C. CODE ANN. REG. 69-61 (2001).
South Dakota		S.D. CODIFIED LAWS § 58-1-3 (1966/2001) (Exempts service contracts).
Tennessee	NO CURRENT ACTIVITY	
Texas	NO CURRENT ACTIVITY	
Utah		UTAH CODE ANN. §§ 31A-6a-101 to 31A-6a-110 (1992/2003); UTAH ADMIN. CODE r. 590-166-1 to 590-166-6 (2009/2014).
Vermont		VT. STAT. ANN. tit. 8, §§ 4247 to 4256 (1998).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. §§ 59.1-435 to 59.1-441 (1991/1997).
Washington	WASH. REV. CODE ANN. §§ 48.110.010 to 48.110.901 (1999/2014).	BULLETIN 2006-01.

**SERVICE CONTRACTS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
West Virginia		W. VA. CODE § 33-4-2 (2000) (Exempts service contracts from insurance code).
Wisconsin		WIS. STAT. §§ 616.71 to 616.82 (1933/1979) (Motor vehicle service clubs).
Wyoming	WYO. STAT. ANN. §§ 26-49-101 to 26-49-111 (1999).	WYO. STAT. ANN. §§ 31-14-101 to 31-14-131 (1969/1984) (Motor vehicle service clubs).



# Appendix C



## California Service Contract Program Legislative History

Subject of Legislation	Author Bill Number, Chapter Number Year
Added regulation of Service Contracts – consumer electronics and appliances only	Rosenthal SB 798, Chapter 1265 Statutes of 1993
Extension of Service Contract Program to 2003	Kelley SB 780, Chapter 406 Statutes of 1997
Expanded authority to offerings by companies regulated by the California Public Utilities Commission if certain criteria was met. This provision was subsequently repealed, as the industry decided not to pursue these offerings.	Polanco SB 2075, Chapter 1075 Statutes of 1998
Amended the definition of service contract seller to include obligors, allowed for the replacement of products under a service contract and added “other kind of appliance product” to definition of “home appliance” in Song-Beverly.	Alquist AB 2704, Chapter 196 Statutes of 1998
Extension of Service Contract Program to 2008	Committee on Business, Professions and Economic Development AB 2973, Chapter 405 Statutes of 2002
Addition of regulated products under the Service Contract Program – alternative of audited statement showing \$100,000,000 in net worth allowed for financial backing.	Wesson AB 1553, Chapter 775 Statutes of 2003
Maintenance of the codes – minor grammatical changes	Committee on Judiciary SB 1852, Chapter 538 Statutes of 2006
Extension of Service Contract Program to 2013	Committee on Business, Professions and Economic Development SB 1047, Chapter 354 Statutes of 2007
Extension of Service Contract Program to 2018, adds “accessories” of electronic sets and appliances, deletes the \$250 limit on incidental payment of indemnity, allows administrators to be the seller/obligor of service contracts	Smyth AB 2111, Chapter 543 Statutes of 2010
Extension of Service Contract Program to 2015 for sections not included in AB 2111, Chapter 543, Statutes of 2010	Price SB 1236, Chapter 322 Statutes of 2012
Addition of optical products to Service Contract Program	Calderon AB 480, Chapter 421 Statutes of 2013
Post Sunset Review legislation – Sets sunset date for January 1, 2019, with reporting recommendations including market condition assessments.	Bonilla AB 2740, Chapter 428 Statutes of 2014
Provided for a fee cap increase for all registration types	Ridley-Thomas AB 1175, Chapter 187 Statutes of 2015

## California Service Contract Program Regulation History

<b>Subject of Regulatory Change</b>	<b>Year</b>
Addition of Article 5.5 to establish service contract registration and financial submissions, definitions, fees, contract filings, and record keeping requirements	1995
Updated Application Form – Revision Date	2004
Established definition of “home health care product”	2005
Allows of \$100,000,000 net worth filing for financial backing alternative	2005
Removal of application reference by incorporating all elements of application into regulation	Pending

# Appendix D



## Anatomy of a Service Contract – Example

**Highlighted information reflects the corresponding sections of the California Civil Code.**

1. **DEFINITIONS:** Throughout this Service Contract ("Plan") the words (1) "you" and "your" refer to the purchaser of this Plan as shown on the invoice and/or cash register receipt including the Lessee, if the product was acquired under a rental or lease-purchase transaction (collectively, RTO Transaction) (2) "We", "us", "our" refer to the company obligated under this Plan as referenced in the Provider section of this Plan (3) "product" refers to furniture sold and used for residential purposes personal, family or household use) that is constructed of upholstered fabric, microfiber, leather, vinyl, wood, glass, laminates, metal, stone and other hard surfaces that are purchased concurrently with this Plan (4) "retailer" indicates the store or outlet where you purchased the product(s) and this Plan

2. **PROVIDER:** The Provider of this Plan depends on the state in which you purchased the Plan. If you purchased this Plan in the following states, AL, AK, CA, CO, CT, DE, DC, GA, IA, ID, IL, IN, KS, KY, LA, MD, MA, ME, MI, MN, MO, MS, MT, NE, ND, NH, NJ, NV, NY, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, WI, WV, **the Provider of this Plan and the entity responsible for fulfilling the terms of this Plan**<sup>1</sup> is Pink Fuzzy Elephants Inc., 111 Dot Ave, Sacramento, CA. We reserve the right to transfer our obligations to another entity.

**<sup>1</sup> 1794.4(c)(5)(D), While the specific title is not used, this section describes the Company as performing the functions of both the Obligor and the Administrator.**

If you purchased this Plan in Florida, the Provider of this Plan and the entity responsible for fulfilling the terms of this Plan is Someone Else Corp., receiving mail at 420 High Street, Columbus, OH 4321 5

If you purchased this Plan in AZ, NC, NM, OK, VA, or WA, the Provider of this Plan and the entity responsible for fulfilling the terms of this Plan is Yet Another, LLC, 8484 Third Street, Columbus, OH 43215.

**If you want to make a claim or have questions about this Plan please call us at 1 800 867 5309**<sup>2,3</sup>

**<sup>2</sup> 1794.4(c)(5), Instructions on how to make a claim must be stated.**

**<sup>3</sup> 1794.4(c)(5)(G), Service address or phone number must be stated. If a phone number is used, it must be toll-free.**

3. **AGREEMENT:** in return for your purchase of this Plan. We agree to provide the benefits stated herein during the term as described below. THIS PLAN IS INCLUSIVE OF THE MANUFACTURER'S WARRANTY; IT DOES NOT REPLACE THE

MANUFACTURER'S WARRANTY, BUT PROVIDES CERTAIN ADDITIONAL BENEFITS DURING THE TERM OF THE MANUFACTURER'S WARRANTY LOSSES COVERED BY THE MANUFACTURER DURING THE MANUFACTURER'S WARRANTY PERIOD ARE NOT COVERED UNDER THIS PLAN AND ARE THE RESPONSIBILITY OF THE MANUFACTURER.

4. **FURNITURE COVERED BY THIS PLAN:** New Upholstered Fabric, Microfiber, A & P Leather, Vinyl, Wood, Glass, Laminates, Metal, Stone and other hard surface residential furniture ONLY. This Plan, together with your sales receipt or other proof of purchase of the product(s), shall collectively constitute the entire Plan relating to your coverage. Your sales receipt describes the covered Product(s) and the duration of this plan.<sup>4</sup>

**<sup>4</sup> 1794.4(c)(1), The product can be identified in the body of the contract itself or (as it is in this case) in referenced documents.**

5. **REPAIR OR REPLACEMENT COVERAGE:** Five (5) years from the date you take delivery of your new furniture<sup>5</sup>; this Plan provides you coverage for stains and/or damage on Fabric, Microfiber, A & P, Leather, Vinyl, Wood, Glass, Laminates, Metal, Stone and other hard surfaces resulting from:

- A structural or component failure due to a defect in materials and workmanship during normal residential use. Includes, but not limited to. breakage of frames, glass, mirrors mechanisms, welds, swivel bases, recliner handles and assembled joints and includes component mechanical and electrical failures such as defective motors, massagers, vibrating units and heaters;
- peeling or checking of the coating of finish on wood or veneer surfaces;
- scratches penetrating through the top coat of wood, metal or laminated surfaces;
- gouge, chip, dent, puncture of wood or laminated surfaces;
- Seam and stitching separations zippers, buttons and tufted buttons;
- Loss of reflectivity on coated glass and mirrors (loss of silvering).

**<sup>5</sup> 1794.4(c)(2), Period of coverage must be delineated. The contract must be clear when the coverage under the contract starts and stops.**

This Plan will provide for the repair or replacement of your covered product. We will make every attempt to repair your product(s). Upon receiving a claim covered by this Plan we will provide repair advice and/or repair products to aid in stain removal or repair of the damage. If the stain or damage persists, you may receive a no charge in home<sup>6</sup> visit by a professional technician<sup>7</sup>. If the technician determines that repairs must be made off site, the damaged product will be removed and returned at no cost to you<sup>8</sup>. If we are unable to repair your product, or where the cost for repair may exceed the current retail replacement value of your covered product, or replacement is required and either, parts, matching fabric or matching leathers needed for repair should become unavailable for your covered product, we may elect to pay you a cash settlement<sup>9</sup>.



**<sup>6</sup> 1794.4(c)(5)(F), Whether or not in-home service is available.**

**<sup>7</sup> 1794.4(c)(5)(C), If the repairs are able to be performed only by a certain person or class of people, then the contract must state so.**

**<sup>8</sup> 1794.4(c)(5)(F). Transportation fees, if any, must be stated.**

**<sup>9</sup> 1794.4(c), General statement of services that the Administrator provides.**

Where your product was acquired under a RTO Transaction, any cash settlement will be made to the owner, which will be the lessor if you have not purchased the product. The amount of the cash settlement shall not exceed the lesser of: the current retail cost of a replacement product of like kind and quality, or the retail purchase price you paid for the original covered product. If a replacement selection is higher in value than the original it is your responsibility to pay for the difference in value. If a replacement selection is of lesser value there will be no refund or credit given for the difference in value. Payment of a cash settlement will fulfill this Plan in its entirety and will cancel and discharge all further obligations under this Plan, where allowed by law.<sup>10</sup> However, if a cash settlement is provided for a product(s) that is a part of a matching set, coverage will still be in effect for the other matching pieces for the remainder of the coverage period. The amount of the cash settlement is determined by us, which is based on the current replacement cost of the covered product and the age of the covered product. In the event your Plan covers more than one product that was sold as a set, coverage under the cash settlement option shall be limited to the individual damaged item within the set. This Plan only covers the product(s) listed on sales receipt. We will NOT replace matching pieces of product(s) that is/are not damaged or otherwise not eligible for coverage under this Plan (except for sectionals, dining table and chairs, when necessary). If we replace your covered product, the original product will become our property. Products that are replaced under this Plan are no longer covered by this Plan (this does not include other pieces covered under this plan that were not damaged). You may purchase another Plan for such replaced product(s) to cover those product(s) if the replaced product(s) is/are not a part of a matching set.

**<sup>10</sup> 1794.4(c)(4)(B), If limits to the terms of applicability exist then they must be spelled out. A common way is to replace the item and consider the remainder of the plan as terminated.**

**RTO TRANSACTIONS:** Where the product was initially acquired under a RTO Transaction, any cash settlement or refund will be paid to the owner of the product at the time the settlement is made. This will be the lessor if you have not yet acquired ownership of the property. In all other respects, the Lessee will retain a beneficial interest in this Plan and all non-cash benefits described herein shall be rendered to the Lessee. Any owner obligations related to maintenance of the product shall be the responsibility of the Lessee during the term of any RTO Transaction except as provided

by law. Any reference to purchased, so/d, or similar terms shall include /eased and its derivatives.

Any reference to purchaser shall mean the Lessee under the RTO Transaction and not the lessor.

**6. YOUR OBLIGATIONS PRIOR TO RECEIVING SERVICE UNDER THIS PLAN:**

**Proof of Purchase:** Each time that you request service as provided by this Plan, you must make available for inspection by the Provider a copy of this Plan, along with the original dated invoice and/or cash register receipt that clearly indicates your purchase of this Plan, and the product to be covered by this Plan. These documents will confirm your eligibility to receive service under this Plan. This Plan, together with your sales receipt or other proof of purchase of the product(s), shall collectively constitute the entire Plan relating to your coverage. Your sales receipt describes the covered Product(s) and the duration of the Plan. **This Plan is not a maintenance or cleaning contract. In order to receive coverage under this Plan, you must have maintained your product as recommended by the manufacturer or using our approved recommended product(s).** <sup>11</sup> Any variation from the manufacturer's or our recommended maintenance plan may cause your claim to be denied.

**<sup>11</sup> 1794.4(c)(4)(D), Whether or not preventive maintenance is included must be specifically addressed. (Note: This is sometimes included as part of the exclusions.)**

**7. IF YOU NEED SERVICE:** Call the Service Center at 1-800-867-5309. Monday - Friday, 8:00 am - 9:00 pm and Saturday from 9:00 am - 5:00 pm - EST or to file a claim online, 24 hours a day, please visit our website at [www.fileaclaim.com](http://www.fileaclaim.com) within thirty (30) days from the date you discovered the damage. Claims submitted after the expiration date or outside of the reporting time period of your Plan will not be accepted. In-home service will be provided on your product. Repairs will be performed at your residence. An adult (of legal age) must be present at your home when the on-site service is performed. Some products may need to be removed from your home to be serviced. If removal is required, the product will be removed and returned at no cost to you.

**8. DELAYS:** We will exercise reasonable efforts in providing service under this Plan, but neither we nor the retailer shall be liable for any damage arising out of delays, and in no event shall we or the retailer be liable for consequential damage. In the event your repair requires more than thirty (30) days to complete, the expiration date of your Plan will be extended by the total number of days, in excess of thirty (30) days, that were required to complete the repair.

**9. PARTS:** Materials furnished as replacements for parts will be drawn from the original manufacturer, the retailer or the service contractor's inventory of new or rebuilt parts and components. These materials will be furnished under provisions of the manufacturer's warranty while still in effect and then by our Plan during the remainder of the term of coverage.

10. **MANUFACTURER'S WARRANTY:** During the manufacturer's warranty period, the manufacturer is responsible for product(s) and service covered under its warranty. If you should call for service on a product covered under the manufacturer's warranty, we will refer your call to the manufacturer.

11. **WHAT IS NOT COVERED:** Anything not specifically listed in the "COVERAGE" section of this Service Plan is excluded. Service or replacement is limited to the damaged product(s) only. The total value of such replacement is limited to \$25,000. This Plan coverage does not cover: <sup>12</sup>

- damage caused by improper cleaning methods or improper cleaning materials;
- damage caused by the application of topical treatments that damages the product(s);
- damage resulting from cleaning methods or products other than those recommended by us and/or the product manufactured;
- secondary and/or collateral damaged;
- damage caused by failure to comply with the manufacturer's warranty;
- any costs or damage from repair and/or cleaning by anyone without written authorization from us;
- damage caused by service, maintenance personnel or contractors;
- loss of resiliency;
- damage caused by transit, delivery, redelivery, product(s) being moved between residences or into or out of storage or movement, including damage caused by packing or unpacking of the covered products;
- damage to product by incontinence, mold or mildew, fading, color loss, discoloration;
- any manufacturer recalls;
- windings, wrappings or bindings on rattan, bamboo, wicker furniture, nor coverage on rattan, bamboo, wicker or other furniture used outdoors;
- plastic ready to assemble product(s);
- inherent design defects including, but not limited to, natural inconsistencies in wood grains wood stains, dust corrosion, "X" coded fabrics, non-colorfast fabric, delamination of microfiber;
- mattresses, except for futon covers and /or cushions;
- accumulation of dirt and debris and/or damages due to the failure to care for or the improper care of your products;
- wear and tear to fabrics and leathers, such as accumulated soiling from everyday use including body oil, hair oil, perspiration, darkened bodily contact areas;
- leather scratches, cracking and/or peeling of leather, splitting of bicast, bycast or bonded leather;
- suede or nubuck;
- natural flaws, manufacturer's defects of leather or upholstery, odors, pet damage from teeth, beaks, or claws;
- products sold that are stained and/or damaged at the time of purchased;

- products used for commercial or institutional purposes, home day care, rental purposes (other than a RTO Transaction) or products sold "as-is" "pre-owned", rental (other than a RTO Transaction) or non-residential furniture;
- service, maintenance, repair, or replacement necessitated by any loss of use or stain or damage resulting from any cause other than normal usage, such as, but not limited to, loss of use or stains or damage due to misuse, abuse, unauthorized repair by others, collision with any other object, loss or stain or damage resulting from failure to provide manufacturer's recommended maintenance or inspection, add-on products or accessories, attachments, corrosion, appliance malfunction, insect infestation, damage or stains caused by war, terrorism, fire, flood, water damage, hurricanes, tornados, windstorm, hail, earthquake, smoke, or other heat source, exposure to the cold, theft, negligence, riot, or any other perils;
- Acts of God, special, indirect, incidental, or consequential damages whether in contract, tort, or negligence; preventive maintenance;
- claims arising from any breach of implied or expressed warranty of merchantability or fitness of the product(s) from the manufacturer; initial installation, assembly or hookup of your product(s);
- removal and reinstallation, except as determined by us; any circumstances for any indirect, consequential or incidental damages, including loss or damage to person or property, arising from the use of, or inability to use, or from the repair or replacement of the product(s);
- crushing, scratches of any type other than those expressly stated in the coverage section, unreasonably excessive loads leading to breakage of structural components; products no longer in your possession.

***<sup>12</sup> 1794.4(c)(4)(A), Typically one of the longest sections of the contract. All exclusion criteria must be stated.***

12. **WHAT YOU MUST DO:** You must perform maintenance, minor adjustments and periodic inspections as explained in the product manufacturer's owner's manual. Should your covered product become damaged, you must submit a claim for coverage within thirty (30) days from the date you discovered the damage. You are to take the necessary steps to protect your product against any further stain or damage. Non-technical cleaning to provide a normal operating environment as described in the manufacturer's instruction manual for the covered product(s) is your responsibility.

13. **RENEWALS:** This Plan is not renewable

14. **TRANSFER:** This Plan is not transferable. <sup>13</sup>

***<sup>13</sup> 1794.4(c)(3), The contract must state if the plan is transferable from one person to another. If there are limits to the transferability (fees, limited times that the product can be transferred, specific timeframes during which a transfer may be performed), the administrator must state explicitly what the limits are.***

15. **IMPORTANT INFORMATION:** if you do not cooperate with the reasonable requests of Plan

Provider, there will be no coverage under this Plan. A failure to exercise rights by us does not waive those rights. We do not assume responsibility for statements or damage by technicians, or any other person or entity not authorized by the Plan Provider. Any provision contained herein which is found to be contrary to applicable laws shall be deemed null and void and the remaining provisions shall continue in full force and effect. Any controversy or claim for damages arising out of, or relating to this Plan, shall be settled by arbitration but specifically excludes class action arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration rules, and judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

16. **OUR OBLIGATIONS UNDER THIS PLAN ARE LIMITED TO REMOVING STAINS. REPAIRING OR REPLACING FURNITURE AND WE DO NOT MAKE ANY OTHER EXPRESSED OR IMPLIED WARRANTIES AND SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES WHATSOEVER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INDIRECT OR CONSEQUENTIAL DAMAGES AND THIS LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

Fraud results in higher costs to the consumer and is illegal. It is our policy to deny service and/or prosecute individuals that submit fraudulent claims.

17. **CANCELLATION:** You may cancel this Plan at any time for any reason by mailing a written request for cancellation and the original copy of this Plan to the Provider at 111 Dot Ave, Sacramento, CA. If you cancel this Plan within the first 30 days after receipt of this Plan and have not made a claim, you will receive a full refund. If you cancel after the first 30 days from receipt of this Plan or at any time after we have paid a claim, You will receive a pro rata refund based on the time remaining on Your Plan, less an administrative fee, not to exceed 1 0% of the price of the Plan or twenty-five dollars (\$25.00), whichever is less, and less any claims paid, where allowed by law.

If we cancel, you shall be refunded the unearned pro rata purchase price of this Plan, less any claims paid We may not cancel this Plan except for a) fraud. b) material misrepresentation, c) non-payment by you, d) for violation of any of the terms and conditions of the Plan, and e) if required to do so by any regulatory authority. If this Plan was inadvertently sold to you on a product, which was not intended to be covered by this Plan, we will cancel this Plan and return the full purchase price of the Plan to you.

18. **DEDUCTIBLE:** There is no deductible payment required for the coverage described in this Plan

Except in the states of Arizona, and New Mexico, the obligations of the provider are guaranteed under a service contract reimbursement policy.

This Plan is not a contract of insurance.

The following state specific requirements are added to and become part of your Service Plan and supersede any other provision to the contrary:

**Alabama Residents:** Any refund due to you will be credited to any outstanding balance of your account, and the excess, if any, shall be refunded to you. A ten (10) percent penalty per month shall be added to a refund that is not paid or credited within forty-five (45) days after you cancel the Plan.

**Arizona Residents:** if you or we cancel this plan, no claims will be deducted from the refund you are entitled to receive under the Cancellation provisions of this contract.

**Arkansas Residents:** Any refund not provided within 45 days shall include a 10% penalty per month the refund remains unpaid.

**California Residents:** For all products other than home appliances and home electronic products, the Cancellation provision is amended as follows: if the Plan is cancelled: (a) within sixty (60) days of the receipt of this Plan, you shall receive a full refund of the price paid for the Plan provided no service has been performed, or (b) after sixty (60) days, you will receive a pro rata refund, less the cost of any service received and less a service fee of 10% of the cost of the contract or \$25.00 (whichever is less).<sup>14</sup> If you cancel and have not received a refund within 30 days from the date of cancellation, the amount of refund will include a penalty of 10% per month for the unpaid amount due and owing to you.

***<sup>14</sup> 1794.41(a)(4), terms of cancelation and refund must be defined. A contract can be cancelled for a full refund if within 30 days of receipt for electronics and appliances or 60 days of receipt for all other products. If the contract is designed to cover multiple types of products, then the cancelation comment may need to contain provisions for both scenarios. If after the applicable window, a prorated refund is given. The seller may also opt to charge an administrative fee. If the contract is designed to cover multiple types of products, then the cancelation comment may need to contain provisions for both scenarios.***

**Connecticut Residents:** The expiration date of this Plan shall automatically be extended by the duration that the product is in our custody while being repaired. If you purchased this contract in Connecticut, you may pursue arbitration to settle disputes between you and the provider of this contract. You may mail your complaint to: State of Connecticut, Insurance Department, P.O. Box 816, Hartford, CT 06142-0816, Attention: Consumer Affairs. The written complaint must describe the dispute, identify the price of the product cost of repair, and include a copy of this contract.

# Appendix E





## Consumer Survey Results

To provide additional feedback to the Bureau, a survey targeted to a sample audience of at least 650 California consumers (actual responses 682) was designed and implemented. The survey was conducted using a vetted panel of survey respondents who met the predetermined criteria of being:

- California residents
- 18+ years of age
- Established consumer activity pertinent to the Bureau's areas of product and services oversight

The survey panel was provided by an international marketing firm with established survey panels populated by qualified respondents. The survey was delivered as an on-line survey provided to the respondents via an email to a personal email account. The survey includes questions or statements requiring a scaled response from among predetermined responses; additionally, two open-ended questions asked for short written responses to broad questions. The two questions were:

1. *Do you have any questions on areas for improvement for this DCA Bureau's overall outreach and communications to consumers to promote awareness of protections and rights in California?*
2. *Do you have any other feedback to add that will contribute to this DCA Bureau's mission and consumer protection related to:*
  - a. *Electronic and appliance repair business registration and regulation and/or*
  - b. *Service contact registration and regulation on various consumer products and/or*
  - c. *The manufacture and sale of upholstered furniture, bedding and thermal insulation products and/or*
  - d. *The testing for sanitization of used and/or rebuilt bedding products offered by a retailer*

The reporting that follows will include the scaled response frequencies; all written responses to the two general questions are included in Attachment 4 completely unedited and un-redacted. A summary of key findings precedes the greater detail in the results tables.

### Summary of Survey Key Findings

The following summarizes selected key findings from the consumer survey.

<b>Consumer Product Category</b>	<b>Purchased product <u>with or without</u> warranty or service contract (% of responders)</b>	<b>Why did <u>not</u> purchase service contract (Top 2 reasons cited)</b>	<b>Satisfaction with product based on purchase price</b>	<b>Used the service contract (purchased service contract)</b>	<b>Satisfaction with service contract process used</b>	<b>Satisfaction with product repair or replacement</b>
<b>Home Appliance</b>	75.0%	Contract cost and product quality & reliability did not warrant contract	77.1% somewhat or highly satisfied	68.8%	95.1%	92.7%
<b>Consumer Electronics</b>	86.2%	Contract cost and product quality & reliability did not warrant contract	93.4% somewhat or highly satisfied	58.5%	84.7%	85.4%
<b>Upholstered Home Furniture</b>	48.5% (23.5% of above purchase was result of advertised sale)	Contract cost and product quality & reliability did not warrant contract	91.3% somewhat or highly satisfied	76.4%	91.5%	92.5%

*Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation  
Market Condition Assessment Final Report 2015*

<b>Bedding, Mattresses, Futons</b>	62.3% (28.6% of above purchases were result of advertised sale)	N/A	66.6%	N/A	N/A	N/A
<b>Note: the product categories below were subject to more limited survey questions</b>						
<b>Jewelry</b>	17.7%	N/A	N/A	73.6%	89.9% somewhat or very satisfied	N/A
<b>Lawn &amp; Garden Equipment</b>	13.9%	N/A	N/A	75.8%	94.4% somewhat or very satisfied	N/A
<b>Power Tools</b>	18%	N/A	N/A	64.2%	88.5% somewhat or very satisfied	N/A
<b>Fitness Equipment</b>	14.8%	N/A	N/A	63.4%	93.7% somewhat or very satisfied	N/A
<b>Small Kitchen Appliances</b>	18.6%	N/A	N/A	52.8%	84.8% somewhat or very satisfied	N/A
<b>Eyeglasses</b>	17.2%	N/A	N/A	61.5%	94.4% somewhat or very satisfied	N/A

## **Consumer Awareness of DCA & Importance of Consumer Protection Provided**

Final survey items focused on survey responder awareness, **before this survey**, of DCA/Bureau roles and areas of oversight, in addition to how important the consumer protection is to the consumer.

<b>Survey Item (awareness <u>before</u> the survey)</b>	<b>% of YES responses</b>	<b>Importance of the consumer protection in this program (% of somewhat and very important responses)</b>
Awareness of DCA and its general mission	47.3%	N/A
Awareness of products and services in this survey under DCA jurisdiction	33.3%	N/A
Awareness of service contracts under DCA consumer protection	N/A	81.0%
Awareness of flammability standards for bedding & upholstered furniture under DCA consumer protection	40%	79.5%
Awareness of used and re-built bedding sanitization under DCA consumer protection	26.7%	81.7%
Awareness of appliance repair businesses under DCA consumer protection	32.7%	81.3%
Awareness of electronics repair businesses under DCA consumer protection	31.9%	81.3%

**HOME APPLIANCE PRODUCT:**

**Have you purchased a home appliance product (examples: clothes washer, dryer, dishwasher, stove/oven, trash compactor, refrigerator, or freezer) in the last 10 years?**

<b>Yes – with Service Agreement/Warranty:</b> 240 - 34.9%	<b>Yes – without Service Agreement/ Warranty:</b> 261 – 37.9%	<b>Yes – Don’t know if had Service Agreement</b> 15 – 2.2%	<b>No:</b> 171 - 24.9%	<b>Don’t Know:</b> 1 - 0.01%
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<b>What was your level of satisfaction with the product considering its purchase price?</b>				
Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)
6 (1.2%)	16 (3.1%)	19 (3.7%)	185 (35.9%)	290 (41.2%)
				Average (SD)
				4.43 (.80)

**Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?**

<b>Yes:</b> 165 (68.8%)	<b>No:</b> 75 (31.3%)
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<b>Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?</b>	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	Avg. (SD)	
	1 (0.6%)	4 (2.4%)	3 (1.8%)	74 (44.8%)	83 (50.3%)	4.42 (.71)	
	<b>N/A</b>						
	1 (0.6%)	3 (1.8%)	8 (4.8%)	57 (34.5%)	96 (58.2%)	4.48 (.73)	
<b>When you received the repaired or</b>	<b>Why did you <u>not</u> purchase the service contract? (Select all that apply). N=171</b>						
	Product value was relatively low not needing a service contract	144 (84.2%)					
	Cost of the service contract	30 (17.5%)					
	Terms and conditions of the service contract	15 (8.8%)					
	The quality or expected reliability of the	146 (85.4%)					

replaced product, what was your satisfaction with the <u>quality of the repair or replacement?</u>							product did not indicate to me a need for a service contract	
							Don't know	8 4.7%

**CONSUMER ELECTRONICS PRODUCT:**

Have you purchased a consumer electronics product (examples: television, radio, stereo/home theater components, CD/DVD/Blu-ray player, desktop computer, laptop computer, tablet computer, personal media player, cell phone, printer, fax machine, video camera, etc.) in the last 5 years?

Yes – with Service Agreement/Warranty: 258 – 37.7%	Yes – without Service Agreement/Warranty: 323 – 47.2%	Yes – Don't know if had Service Agreement 9 – 1.3%	No: 87 – 12.7%	Don't Know: 8 – 1.2%
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<b>What was your level of satisfaction with the product considering its purchase price?</b>			Average (SD)	N/A
Very Dissatisfied (1)	Neither Satisfied or Dissatisfied	Very Satisfied (5)		
3 (0.5%)	26 (4.4%)	355 (60.2%)		

**Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?**

<b>Yes:</b> 151 (58.5%)	<b>No:</b> 107 (41.5%)	<b>Why did you not purchase the service contract? (Select all that apply). N=323</b>				
		Product value was relatively low not needing a service contract	76 23.5%	N/A		
<b>Satisfaction rating with the <u>service</u></b>	N/A	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Very Satisfied (5)	Avg. (SD)
		3 (2.0%)	9 (6.0%)	11 (7.3%)	81 (53.6%)	4.28 (.98)
		Cost of the service contract				
Terms and conditions of the service contract					36 11.1%	

<p><b>process you were directed to follow to get the repair, maintenance or replacement completed?</b></p>							Was not aware of the option for a service contract	16 5.0%	
							The quality or expected reliability of the product did not indicate to me a need for a service contract	171 52.9%	
<p><b>When you received the repaired or replaced product, what was your satisfaction with the <u>quality of the repair or replacement?</u></b></p>	2 (1.3%)	9 (6.0%)	11 (7.3%)	44 (29.1%)	85 (56.3%)	4.33 (.94)	Don't know	20 6.2%	

**HOME FURNITURE PRODUCT:**

**Have you purchased an upholstered home furniture product in the last 10 years?**

<p><b>Yes – with Service Agreement/Warranty:</b> 123 – 18.0%</p>		<p><b>Yes – without Service Agreement/ Warranty:</b> 206 – 30.1%</p>		<p><b>Yes – Don't know if purchase was result of an advertised sale:</b> 3 – 0.4%</p>		<p><b>No:</b> 345 – 50.4%</p>		<p><b>Don't Know:</b> 8 – 1.2%</p>	
<p><b>Yes – Purchase was a result of an advertised sale:</b> 161 – 23.5%</p>		<p><b>Yes – purchase was NOT result of an advertised sale:</b> 163 – 23.8%</p>		<p><b>Yes – Don't know if purchase was result of an advertised sale:</b> 8 – 1.2%</p>					
<p><b>What was your level of satisfaction with the product considering its purchase price?</b></p>									
<p>Very Dissatisfied (1)</p>		<p>Somewhat Dissatisfied</p>		<p>Neither Satisfied or Dissatisfied</p>		<p>Somewhat Satisfied</p>		<p>Average (SD)</p>	
3 (0.9%)		7 (2.1%)		19 (5.7%)		129 (38.9%)		174 (52.4%) 4.40 (.77)	
<p><b>Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?</b></p>									
<p><b>Why did you not purchase the service contract? (Select all that apply). N=206</b></p>									
<p><b>Yes:</b> 94</p>				<p><b>No:</b> 29</p>		<p>Product value was relatively low</p>		<p>44 21.4%</p>	
								<p><b>N/A</b></p>	

(76.4%)		(4.1%)					not needing a service contract	
		Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	Avg. (SD)	
<b>Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?</b>		3 (3.2%)	1 (1.1%)	4 (4.3%)	37 (39.4%)	49 (52.1%)	4.36 (.88)	68 33.0%
<b>When you received the repaired or replaced product, what was your satisfaction with the <u>quality of the repair or replacement</u>?</b>		3 (3.1%)	1 (1.1%)	3 (3.2%)	43 (45.7%)	44 (46.8%)	4.32 (.86)	11 5.3%
								52 25.2%
								98 47.6%
								14 6.8%

**BEDDING/MATTRESSES**

Have you purchased any bedding sets including mattresses or futons in the last 10 years?

Yes – purchased was a result of an advertised sale:		Yes – purchase was NOT the result of an advertised sale:		Yes – Don’t know if purchase was result of an advertised sale		No:	Don’t Know:
196 28.6%		206 30.1%		25 3.6%		247 36.1%	11 1.6%
<b>What was your level of satisfaction with the product considering its purchase price?</b>							
Very Dissatisfied (1)		Neither Satisfied or Dissatisfied		Somewhat Satisfied		Average (SD)	
2 (0.5%)	17 (4.0%)	30 (7.0%)	140 (32.8%)	238 (33.8%)		4.39 (.82)	N/A



**JEWELRY:**

Have you purchased a service contract (extended warranty) for a JEWELRY product during the last five years?

	<b>Yes:</b> 121 17.7%	<b>No:</b> 554 81.2%	<b>Don't Know:</b> 7 1.0%		
<b>Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?</b>	<b>N/A</b>				
<b>Yes:</b> 89 (73.6%)	<b>No:</b> 32 (26.4%)				
<b>Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?</b>	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Very Satisfied (5)	Avg. (SD)
	0 (0.0%)	0 (0.0%)	9 (10.1%)	34 (38.2%)	46 (51.7%)
<b>N/A</b>					

**LAWN/GARDEN EQUIPMENT:**

Have you purchased a service contract (extended warranty) for a LAWN/GARDEN EQUIPMENT product during the last five years?

	<b>Yes:</b> 95 13.9%	<b>No:</b> 580 85.0%	<b>Don't Know:</b> 7 1.0%		
<b>Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?</b>	<b>N/A</b>				
<b>Yes:</b> 72 (75.8%)	<b>No:</b> 23 (24.2%)				
<b>Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?</b>	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Very Satisfied (5)	Avg. (SD)
	0 (0.0%)	0 (0.0%)	9 (10.1%)	34 (38.2%)	46 (51.7%)
<b>N/A</b>					

Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?	1 (1.4%)	2 (2.8%)	1 (1.4%)	35 (49.3%)	32 (45.1%)	4,34 (.77)	

**POWER TOOLS:**

**Have you purchased a service contract (extended warranty) for a POWER TOOLS product during the last five years?**

<b>Yes:</b> 123 18.0%	<b>No:</b> 551 80.8%	<b>Don't Know:</b> 8 1.1%
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**Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?**

Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	Avg. (SD)	N/A
	1 (1.3%)	3 (3.8%)	5 (6.4%)	33 (42.3%)	36 (46.2%)	4.28 (.85)	
	<b>No:</b> 44 (35.8%)						

**FITNESS EQUIPMENT:**

**Have you purchased a service contract (extended warranty) for a FITNESS EQUIPMENT product during the last five years?**

<b>Yes:</b> 101 14.8%	<b>No:</b> 576 84.5%	<b>Don't Know:</b> 5 0.7%
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**Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?**

<b>Yes:</b> 64 (63.4%)	<b>No:</b> 37 (36.6%)	<b>Don't Know:</b> N/A
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Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	Avg. (SD)	N/A
	0 (0.0%)	0 (0.0%)	4 (6.3%)	18 (28.1%)	42 (65.6%)	4.59 (.61)	

**SMALL KITCHEN APPLIANCE:**

Have you purchased a service contract (extended warranty) for a SMALL KITCHEN APPLIANCE product during the last five years?

Yes: 127 18.6%	No: 546 80.1%	Don't Know: 9 1.3%
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Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?

Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	Avg. (SD)	N/A
	1 (1.5%)	2 (3.0%)	7 (10.6%)	22 (33.3%)	34 (51.5%)	4.30 (.89)	

**EYEGLASSES:**

Have you purchased a service contract (extended warranty) for an EYEGLASSES product during the last five years?

Yes: 117 17.2%	No: 554 81.2%	Don't Know: 11 1.6%
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Did you have to use the extended warranty, maintenance agreement, or service contract for the product to obtain repairs or a replacement?

Yes:	No:	N/A
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72 (61.5%)	45 (38.5%)					N/A
Satisfaction rating with the <u>service process</u> you were directed to follow to get the repair, maintenance or replacement completed?	Very Dissatisfied (1)	Somewhat Dissatisfied	Neither Satisfied or Dissatisfied	Somewhat Satisfied	Very Satisfied (5)	
	0 (0.0%)	1 (1.4%)	3 (4.2%)	34 (47.2%)	34 (47.2%)	
						Avg. (SD) 4.40 (.64)

**GENERAL DCA AWARENESS:**

Question	Yes	No	Don't Know	Follow Up Question	Rating	Mean (SD)
Before this survey I was aware of the California State Department of Consumer Affairs (DCA) and its general mission.	321 (47.3%)	312 (46.0%)	45 (6.6%)		(none)	
Before this survey I was aware that the consumer products and services in California covered in this survey are included in the safety and consumer protection jurisdiction of the DCA.	226 (33.3%)	388 (57.2%)	64 (9.4%)	How important is it to you that service contracts on consumer products are under the consumer protection roles of the California DCA?	Very unimportant	12 (1.8%)
					Somewhat unimportant	8 (1.2%)
					Neither important or unimportant	109 (16.1%)
					Somewhat important	229 (33.8%)
					Very Important	320 (47.2%)
						<b>4.23 (.89)</b>
Before this survey I was aware that bedding and upholstered	271 (40.0%)	354 (52.2%)	53 (7.8%)	How important is it to you that bedding and upholstered furniture fire	Very unimportant	12 (1.8%)
					Somewhat unimportant	9
						<b>4.23 (.90)</b>

Question	Yes	No	Don't Know	Follow Up Question	Rating		Mean (SD)
furniture products in California are tested by DCA for resistance to fire (flammability) requirements.				resistance standards are under the consumer protection roles of the California DCA?		(1.3%)	
					Neither important or unimportant	118 (17.4%)	
					Somewhat important	213 (31.4%)	
					Very Important	326 (48.1%)	
Before this survey I was aware that used/rebuilt bedding products offered by retailers are tested by DCA for meeting sanitization requirements.	181 (26.7%)	438 (64.6%)	59 (8.7%)	How important is it to you that bedding sanitization standards are under the consumer protection role of the California DCA?	Very unimportant	14 (2.1%)	<b>4.31</b> <b>(.91)</b>
					Somewhat unimportant	8 (1.2%)	
					Neither important or unimportant	102 (15.0%)	
					Somewhat important	184 (27.1%)	
Before this survey I was aware that appliance repair businesses in California are registered under the consumer protection roles of the DCA.	222 (32.7%)	398 (58.7%)	58 (8.6%)	How important is it to you that electronic and appliance repair businesses are under the consumer protection role of the California DCA?	Very unimportant	9 (1.3%)	<b>4.27</b> <b>(.86)</b>
					Somewhat unimportant	6 (0.9%)	
					Neither important or unimportant	112 (16.5%)	
					Somewhat Important	216 (31.9%)	
Before this survey I was aware that electronics repair businesses in California are registered under the consumer protection roles of the DCA.	216 (31.9%)	414 (61.1%)	48 (7.1%)		Very Important	335 (49.4%)	

*Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation  
Market Condition Assessment Final Report 2015*

Limited survey respondent demographics were captured at the end of the survey and are reported in the table below.

<b>Demographic</b>	<b>Sub-group choices</b>	<b>Percentage of total respondents</b>
<b>Age (years)</b>	18-29	11.9%
	30-39	21.3%
	40-49	17.9%
	50-59	18.2%
	60-69	19.0%
	70 or greater	11.6%
	Decline to state	0.1%
<b>Gender</b>	Female	53.3%
	Male	46.4%
	Decline to state	0.3%
<b>Housing Situation</b>	Own home	66.5%
	Renter	29.6%
	Other housing arrangement	3.4%
	Decline to state	0.4%
<b>Annual Household Income</b>	>\$100K	20.2%
	>\$75K--\$100K	19.2%
	>\$50K--\$75K	18.3%
	>25K--\$50K	19.3%
	<\$25K	18.3%
	Decline to state	4.6%

# Appendix F







**NATIONAL WARRANTY SURVEY - NOVEMBER 2014**

**HOW THE SURVEY WAS CONDUCTED**

This survey was conducted by Mason-Dixon Polling & Research, Inc. of Jacksonville, Florida from November 13 through November 19, 2014. A total of 1,000 adults were interviewed nationwide by telephone.

Those interviewed on cell phones were selected from a list of working cell phone numbers. Those interviewed on land-lines were selected by the random variation of the last four digits of telephone numbers. A cross-section of exchanges was utilized and regional quotas assigned based on population in order to ensure an accurate reflection of the country.

The margin for error, according to standards customarily used by statisticians, is no more than plus or minus 3.2 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if the entire population were sampled. The margin for error is higher for any subgroup, such as a regional or gender grouping.

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**SURVEY RESULTS**

**I am going to read a series of statements. After each one, please tell me if you agree or disagree with it.**

**STATEMENT: I would rather spend a little more money if it saves me time.**

AGREE	67%
DISAGREE	28%
NOT SURE	5%

**STATEMENT:** It is worth it to pay a little more to know that I don't have to deal with the hassle of repairs.

AGREE	71%
DISAGREE	22%
NOT SURE	7%

**QUESTION:** What is the main reason you purchased an extended warranty? (**LIST NOT READ**)

37% - AVOID BIG, UNEXPECTED EXPENSE  
31% - AVOID HASSLE OF REPAIRS  
16% - FEEL THE POLICY WILL PAY OUT MORE THAN IT COST TO PURCHASE  
12% - PEACE OF MIND/REDUCE STRESS OR WORRY  
3% - OTHER  
1% - NOT SURE

**QUESTION:** How satisfied were you with your decision to purchase a warranty or service contract?

VERY SATISFIED	49%
SOMEWHAT SATISFIED	35%
SOMEWHAT UNSATISFIED	6%
VERY UNSATISFIED	5%
NOT SURE ( <b>NOT READ</b> )	5%

**QUESTION:** Do you see any of the following as a major benefit of having an extended Warranty on your consumer electronics, appliances, home systems or car services contracts?

	<u>YES</u>	<u>NO</u>
- Peace of mind?	48%	52%
- Convenience?	48%	52%
- Avoid unexpected expenses?	55%	45%

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**DEMOGRAPHICS**

**AGE:**

18-29	156 (16%)
30-39	194 (19%)

40-49	198 (20%)
50-59	182 (18%)
60+	255 (26%)
Refused	15 (1%)

**RACE/ETHNICITY:**

White/Caucasian	706 (70%)
Black/African-American	136 (14%)
Hispanic/Latino	106 (11%)
Asian or Other	43 (4%)
Refused	9 (1%)

**EDUCATION:**

High School (or less)	258 (26%)
Some College/Technical School	336 (34%)
College Degree	253 (25%)
Graduate Degree	140 (14%)
Refused	13 (1%)

**INCOME:**

<\$25,000	109 (11%)
\$25,000-\$34,999	102 (10%)
\$35,000-\$49,999	110 (11%)
\$50,000-\$74,999	106 (11%)
\$75,000-\$99,999	113 (11%)
\$100,000-\$124,999	99 (10%)
\$125,000+	137 (14%)
Refused	224 (22%)

**SEX:**

Male	488 (49%)
Female	512 (51%)

**REGION:**

Northeast	208 (21%)
Midwest	204 (20%)
South	311 (31%)
Western Interior	126 (13%)
Pacific Coast	151 (15%)