

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2111

Introduced by Assembly Member Smyth

February 18, 2010

An act to amend Sections 9855, 9855.2, and 9855.9 of, and to add Sections 9855.15 and 9855.85 to, the Business and Professions Code, to amend Section 1794.41 of the Civil Code, and to amend Section 12800 of, and to repeal Section 116.5 of, the Insurance Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2111, as amended, Smyth. Service contracts.

(1) Existing law, the Electronic and Appliance Repair Dealer Registration Law, makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

Existing law regulates service contracts, as defined, relating to maintenance or repair of specified sets and appliances. A service contract may include provisions for incidental payment of indemnity, not exceeding the retail value of \$250 per year. Existing law prohibits a service contract administrator, as defined, from being an obligor, as defined, on a service contract and existing law requires these service contract administrators to maintain a service contract reimbursement policy, as defined.

This bill would change the definition of service contract by expanding the items a contract may cover to include accessories of electronic sets or appliances. The bill would delete the \$250 per year limit on incidental payments. The bill would also change the definition of service contract administrator to no longer exclude service contract sellers and insurers admitted to do business in the state. The bill would authorize a service contract administrator to be an obligor on a service contract where all service contracts under which the service contract administrator is obligated are insured under a service contract reimbursement insurance policy.

Existing law defines a service contract seller as 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.

This bill would specify that a service contract seller also means a 3rd party, including an obligor who is not the seller, manufacturer, or repairer of the product. The bill would require a 3rd party obligor to obtain a service contract reimbursement policy. The bill would specify that a service contract administrator or a 3rd party seller acting as an obligor without a service contract reimbursement policy shall be deemed to be unlawfully transacting the business of insurance and therefore subject to specified criminal and monetary penalty provisions. Because willfully transacting the business of insurance without a certificate of authority would constitute a crime, the bill would impose a state-mandated local program.

Existing law prohibits a service contract seller from issuing a service contract without complying with specific requirements.

This bill would instead prohibit a service contract seller from issuing a service contract unless the obligor under the contract has complied with specific requirements.

Existing law makes these provisions relating to service contracts inoperative on January 1, 2013.

This bill would extend the operation of these provisions to January 1, 2018.

The bill would make other technical and clarifying changes.

(2) Existing law prohibits a service contract covering any motor vehicle, home appliance, or home electronic product purchased for use in this state from being offered for sale or sold unless several elements exist, including that the contract is cancelable by the purchaser under certain conditions.

This bill would change the required conditions of a cancellation in that the seller would no longer be required to indicate in the contract which of specified bases for a pro rata refund the seller is using.

~~(3) Existing law provides that an express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, is automobile insurance, unless certain requirements are met.~~

~~This bill would delete those provisions.~~

~~(4)~~

(3) Existing law defines vehicle service contract for purposes of provisions relating to sellers of vehicles, *and exempts a warranty provided by a vehicle glass manufacturer from the requirements governing a vehicle service contract.*

~~This bill would add to the definition of a vehicle service contract an agreement, provided with or without separate consideration, that promises to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft, conditioned upon the use of a specific brand or brands of lubricant, treatment, fluid, or additive.~~

~~This bill would add a warranty provided by a glass sealant manufacturer to the exemption.~~

~~(5)~~

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

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

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

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

- 1 SECTION 1. Section 9855 of the Business and Professions
- 2 Code is amended to read:
- 3 9855. The definitions used in this section shall govern the
- 4 construction and terms as used in this chapter:
- 5 (a) "Service contract" means a contract in writing to perform,
- 6 over a fixed period of time or for a specified duration, services
- 7 relating to the maintenance, replacement, or repair of an electronic

1 set or appliance, as defined by this chapter, and their accessories
2 or of furniture, jewelry, lawn and garden equipment, power tools,
3 fitness equipment, telephone equipment, small kitchen appliances
4 and tools, or home health care products, and may include provisions
5 for incidental payment of indemnity under limited circumstances,
6 including, but not limited to, power surges, food spoilage, or
7 accidental damage from handling.

8 (b) “Service contract administrator” or “administrator” means
9 a person who performs or arranges, or has an affiliate who performs
10 or arranges, the collection, maintenance, or disbursement of
11 moneys to compensate any party for claims or repairs pursuant to
12 a service contract, and who also performs or arranges, or has an
13 affiliate who performs or arranges, any of the following activities
14 on behalf of service contract sellers:

15 (1) Providing service contract sellers with service contract forms.

16 (2) Participating in the adjustment of claims arising from service
17 contracts.

18 (3) Arranging on behalf of service contract sellers the insurance
19 required by Section 9855.2.

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

24 (c) (1) “Service contract seller” or “seller” means a person who
25 sells or offers to sell a service contract to a service contractholder,
26 including a person who is the obligor under a service contract sold
27 by the seller, manufacturer, or repairer of the product covered by
28 the service contract.

29 (2) “Service contract seller” or “seller” also means a third party,
30 including an obligor, who is not the seller, manufacturer, or repairer
31 of the product. However, a third party shall not be an obligor on
32 a service contract unless the obligor obtains a service contract
33 reimbursement policy for all service contracts under which the
34 third party is obligated under the terms of a service contract.

35 (d) “Service contractholder” means a person who purchases or
36 receives a service contract from a service contract seller.

37 (e) “Service contractor” means a service contract administrator
38 or a service contract seller.

39 (f) “Service contract reimbursement insurance policy” means
40 a policy of insurance issued by an insurer admitted to do business

1 in this state providing coverage for all obligations and liabilities
2 incurred by a service contract seller under the terms of the service
3 contracts sold in this state by the service contract seller to a service
4 contractholder. The service contract reimbursement insurance
5 policy shall either cover all service contracts sold or specifically
6 cover those contracts sold to residents of the State of California.

7 (g) “Obligor” is the entity financially and legally obligated under
8 the terms of a service contract.

9 (h) The terms “consumer goods,” “manufacturer,” “retail seller,”
10 “retailer,” and “sale” shall have the same meanings ascribed to
11 them in Section 1791 of the Civil Code.

12 SEC. 2. Section 9855.15 is added to the Business and
13 Professions Code, to read:

14 9855.15. A service contract administrator who is an obligor
15 on a service contract and is registered as a service contract
16 administrator may perform all the functions permitted by a seller
17 and shall not be required to register separately as a seller.

18 SEC. 3. Section 9855.2 of the Business and Professions Code
19 is amended to read:

20 9855.2. (a) A service contract seller shall not issue, sell, or
21 offer for sale a service contract unless the obligor under the service
22 contract has complied with one of the following requirements:

23 (1) Files with the director one of the following:

24 (A) The most recent annual report on Form 10-K required by
25 the Securities and Exchange Commission, reflecting a net worth
26 greater than the sum of the deferred revenues from service contracts
27 in force. If the service contractor is a foreign corporation that files
28 a comparable audited financial statement with its home government
29 or with the United States government, the director may deem that
30 statement an acceptable substitute for Form 10-K.

31 (B) The most recent audited financial statement reflecting a net
32 worth of not less than one hundred million dollars (\$100,000,000).
33 The financial statement shall be certified by a certified public
34 accountant who is licensed in the state where the service contract
35 seller maintains its principal place of business or the seller’s state
36 of domestic incorporation.

37 (2) Obtains a service contract reimbursement insurance policy.

38 (3) Sells service contracts that are administered by a service
39 contract administrator who has obtained a service contract

1 reimbursement insurance policy covering the seller’s service
2 contracts.

3 (4) Maintains and annually verifies to the director a funded
4 account held in escrow equal to a minimum of 25 percent of the
5 deferred revenues from the service contracts in force.

6 (b) A service contract administrator shall not administer service
7 contracts sold in this state unless a service contract reimbursement
8 insurance policy covering these service contracts has been obtained.

9 SEC. 4. Section 9855.85 is added to the Business and
10 Professions Code, to read:

11 9855.85. Unless otherwise lawfully transacting the business
12 of insurance pursuant to a certificate of authority issued pursuant
13 to Section 700 of the Insurance Code for the appropriate class, a
14 service contract administrator or third-party seller acting as an
15 obligor on a service contract without having a service contract
16 reimbursement insurance policy covering all service contracts
17 under which the service contract administrator or third-party seller
18 is obligated shall be deemed to be unlawfully transacting the
19 business of insurance and shall be subject to subdivision (b) of
20 Section 700 and Section 12921.8 of the Insurance Code.

21 SEC. 5. Section 9855.9 of the Business and Professions Code
22 is amended to read:

23 9855.9. This article shall remain in effect only until January
24 1, 2018, and as of that date is repealed, unless a later enacted
25 statute, that is enacted before January 1, 2018, deletes or extends
26 that date.

27 SEC. 6. Section 1794.41 of the Civil Code is amended to read:

28 1794.41. (a) No service contract covering any motor vehicle,
29 home appliance, or home electronic product purchased for use in
30 this state may be offered for sale or sold unless all of the following
31 elements exist:

32 (1) The contract shall contain the disclosures specified in Section
33 1794.4 and shall disclose in the manner described in that section
34 the buyer’s cancellation and refund rights provided by this section.

35 (2) The contract shall be available for inspection by the buyer
36 prior to purchase and either the contract, or a brochure which
37 specifically describes the terms, conditions, and exclusions of the
38 contract, and the provisions of this section relating to contract
39 delivery, cancellation, and refund, shall be delivered to the buyer
40 at or before the time of purchase of the contract. Within 60 days

1 after the date of purchase, the contract itself shall be delivered to
2 the buyer. If a service contract for a home appliance or a home
3 electronic product is sold by means of a telephone solicitation, the
4 seller may elect to satisfy the requirements of this paragraph by
5 mailing or delivering the contract to the buyer not later than 30
6 days after the date of the sale of the contract.

7 (3) The contract is applicable only to items, costs, and time
8 periods not covered by the express warranty. However, a service
9 contract may run concurrently with or overlap an express warranty
10 if (A) the contract covers items or costs not covered by the express
11 warranty or (B) the contract provides relief to the purchaser not
12 available under the express warranty, such as automatic
13 replacement of a product where the express warranty only provides
14 for repair.

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

17 (A) Unless the contract provides for a longer period, within the
18 first 60 days after receipt of the contract, or with respect to a
19 contract covering a used motor vehicle without manufacturer
20 warranties, a home appliance, or a home electronic product, within
21 the first 30 days after receipt of the contract, the full amount paid
22 shall be refunded by the seller to the purchaser if the purchaser
23 provides a written notice of cancellation to the person specified in
24 the contract, and if no claims have been made against the contract.
25 If a claim has been made against the contract either within the first
26 60 days after receipt of the contract, or with respect to a used motor
27 vehicle without manufacturer warranties, home appliance, or home
28 electronic product, within the first 30 days after receipt of the
29 contract, a pro rata refund, based on either elapsed time or an
30 objective measure of use, such as mileage or the retail value of
31 any service performed, at the seller's option, shall be made by the
32 seller to the purchaser if the purchaser provides a written notice
33 of cancellation to the person specified in the contract.

34 (B) Unless the contract provides for a longer period for obtaining
35 a full refund, after the first 60 days after receipt of the contract, or
36 with respect to a contract covering a used motor vehicle without
37 manufacturer warranties, a home appliance, or a home electronic
38 product, after the first 30 days after the receipt of the contract, a
39 pro rata refund, based on either elapsed time or an objective
40 measure of use, such as mileage or the retail value of any service

1 performed, at the seller's option, shall be made by the seller to the
2 purchaser if the purchaser provides a written notice of cancellation
3 to the person specified in the contract. In addition, the seller may
4 assess a cancellation or administrative fee, not to exceed 10 percent
5 of the price of the service contract or twenty-five dollars (\$25),
6 whichever is less.

7 (C) If the purchase of the service contract was financed, the
8 seller may make the refund payable to the purchaser, the assignee,
9 or lender of record, or both.

10 (b) Nothing in this section shall apply to a home protection plan
11 that is issued by a home protection company which is subject to
12 Part 7 (commencing with Section 12740) of Division 2 of the
13 Insurance Code.

14 (c) If any provision of this section conflicts with any provision
15 of Part 8 (commencing with Section 12800) of Division 2 of the
16 Insurance Code, the provision of the Insurance Code shall apply
17 instead of this section.

18 ~~SEC. 7. Section 116.5 of the Insurance Code is repealed.~~

19 ~~SEC. 8.~~

20 *SEC. 7.* Section 12800 of the Insurance Code is amended to
21 read:

22 12800. The following definitions apply for purposes of this
23 part:

24 (a) "Motor vehicle" means a self-propelled device operated
25 solely or primarily upon land and may include both self-propelled
26 motor homes or recreational vehicles, non-self-propelled camping
27 and recreational trailers, off-road vehicles, and trailers designed
28 to transport off-road vehicles. However, "motor vehicle" shall not
29 include a self-propelled vehicle, or a component part of such a
30 vehicle, that has any of the following characteristics:

31 (1) Has a gross vehicle weight rating of 30,000 pounds or more,
32 and is not a recreational vehicle as defined by Section 18010 of
33 the Health and Safety Code.

34 (2) Is designed to transport more than 15 passengers, including
35 the driver.

36 (3) Is used in the transportation of materials considered
37 hazardous pursuant to the Hazardous Materials Transportation Act
38 (49 U.S.C. Sec. 5101 et seq.), as amended.

39 (b) "Watercraft" means a vessel, as defined in Section 21 of the
40 Harbors and Navigation Code, and may include any

1 non-self-propelled trailer used to transport such watercraft upon
2 land.

3 (c) (1) “Vehicle service contract” means a contract or agreement
4 for a separately stated consideration and for a specific duration to
5 repair, replace, or maintain a motor vehicle or watercraft, or to
6 indemnify for the repair, replacement, or maintenance of a motor
7 vehicle or watercraft, necessitated by an operational or structural
8 failure due to a defect in materials or workmanship, or due to
9 normal wear and tear.

10 (2) A vehicle service contract may also provide for the incidental
11 payment of indemnity under limited circumstances only in the
12 form of the following additional benefits: coverage for towing,
13 substitute transportation, emergency road service, rental car
14 reimbursement, reimbursement of deductible amounts under a
15 manufacturer’s warranty, and reimbursement for travel, lodging,
16 or meals.

17 (3) “Vehicle service contract” also includes an agreement of a
18 term of at least one year, for separately stated consideration, that
19 promises routine maintenance.

20 ~~(4) “Vehicle service contract” also includes an agreement,~~
21 ~~provided with or without separate consideration, that promises to~~
22 ~~repair, replace, or maintain a motor vehicle or watercraft, or to~~
23 ~~indemnify for the repair, replacement, or maintenance of a motor~~
24 ~~vehicle or watercraft, conditioned upon the use of a specific brand~~
25 ~~or brands of lubricant, treatment, fluid, or additive.~~

26 (5)

27 (4) Notwithstanding Section 116, and paragraphs (1) and (2) of
28 this subdivision, a vehicle service contract also includes one or
29 more of the following:

30 (A) An agreement that promises the repair or replacement of a
31 tire or wheel necessitated by wear and tear, defect, or damage
32 caused by a road hazard. However, an agreement that promises
33 the repair or replacement of a tire necessitated by wear and tear,
34 defect, or damage caused by a road hazard, in which the obligor
35 is the tire manufacturer, is exempt from the requirements of this
36 part. A warranty provided by a tire or wheel distributor or retailer
37 is exempt from the requirements of this part as long as the warranty
38 covers only defects in the material or workmanship of the tire or
39 wheel.

1 (B) An agreement that promises the repair or replacement of
2 glass on a vehicle necessitated by wear and tear, defect, or damage
3 caused by a road hazard. However, a warranty provided by a
4 vehicle glass *or glass sealant* manufacturer is exempt from the
5 requirements of this part. A warranty provided by a vehicle glass
6 distributor or retailer is exempt from the requirements of this part
7 as long as the warranty covers only defects in the material or
8 workmanship of the vehicle glass.

9 (C) An agreement that promises the removal of a dent, ding, or
10 crease without affecting the existing paint finish using paintless
11 dent repair techniques, and which expressly excludes the
12 replacement of vehicle body panels, sanding, bonding, or painting.

13 (d) “Service contract administrator” or “administrator” means
14 any person, other than an obligor, who performs or arranges,
15 directly or indirectly, the collection, maintenance, or disbursement
16 of moneys to compensate any party for claims or repairs pursuant
17 to a vehicle service contract, and who also performs or arranges,
18 directly or indirectly, any of the following activities with respect
19 to vehicle service contracts in which a seller located within this
20 state is the obligor:

21 (1) Providing sellers with service contract forms.

22 (2) Participating in the adjustment of claims arising from service
23 contracts.

24 (e) “Purchaser” means any person who purchases a vehicle
25 service contract from a seller.

26 (f) “Seller” means either of the following:

27 (1) With respect to motor vehicles, a dealer or lessor-retailer
28 licensed in one of those capacities by the Department of Motor
29 Vehicles and who sells vehicle service contracts incidental to his
30 or her business of selling or leasing motor vehicles.

31 (2) With respect to watercraft, a person who sells vehicle service
32 contracts incidental to that person’s business of selling or leasing
33 watercraft vehicles.

34 (g) “Obligor” means the entity legally obligated under the terms
35 of a service contract.

36 ~~SEC. 9.~~

37 *SEC. 8.* No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O