

ASSEMBLY BILL

No. 1926

Introduced by Assembly Member Solorio

February 22, 2012

An act to amend Section 9855 of the Business and Professions Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1926, as introduced, Solorio. Service contracts.

Existing law, the Electronic and Appliance Repair Dealer Registration Law, regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances, and 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. A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefor subject to specified criminal penalties.

This bill would include in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the bureau and other requirements of the act. By expanding the definition of service contract, the bill would expand the scope of a crime and, thus, would impose a state-mandated local program.

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
8 set or appliance, as defined by this chapter, and their accessories
9 or of furniture, jewelry, lawn and garden equipment, power tools,
10 fitness equipment, telephone equipment, small kitchen appliances
11 and tools, *optical products*, or home health care products, and may
12 include provisions for incidental payment of indemnity under
13 limited circumstances, including, but not limited to, power surges,
14 food spoilage, or accidental damage from handling. "Service
15 contract" does not include a contract in writing to maintain
16 structural wiring associated with the delivery of cable, telephone,
17 or other broadband communications services.

18 (b) "Service contract administrator" or "administrator" means
19 a person who performs or arranges the collection, maintenance,
20 or disbursement of moneys to compensate any party for claims or
21 repairs pursuant to a service contract, and who also performs or
22 arranges any of the following activities on behalf of service contract
23 sellers:

- 24 (1) Providing service contract sellers with service contract forms.
- 25 (2) Participating in the adjustment of claims arising from service
26 contracts.
- 27 (3) Arranging on behalf of service contract sellers the insurance
28 required by Section 9855.2.

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

1 (c) (1) “Service contract seller” or “seller” means a person who
2 sells or offers to sell a service contract to a service contractholder,
3 including a person who is the obligor under a service contract sold
4 by the seller, manufacturer, or repairer of the product covered by
5 the service contract.

6 (2) “Service contract seller” or “seller” also means a third party,
7 including an obligor, who is not the seller, manufacturer, or repairer
8 of the product. However, a third party shall not be an obligor on
9 a service contract unless the obligor obtains a service contract
10 reimbursement insurance policy for all service contracts under
11 which the third party is obligated under the terms of a service
12 contract.

13 (3) “Service contract seller” or “seller” shall not include the
14 following:

15 (A) A bank or bank holding company, or the subsidiary or
16 affiliate of either, or a financial institution, licensed under state or
17 federal law, selling or offering to sell a service contract unless that
18 entity is financially and legally obligated under the terms of a
19 service contract.

20 (B) An electrical device manufacturer or electrical contractor
21 who constructs, installs, or services electrical devices, which
22 include any unit of an electrical system intended to carry electrical
23 energy as part of a building’s electrical system, including raceways,
24 conductors, invertors, conduit, wires, switches, or other similar
25 devices.

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

28 (e) “Service contractor” means a service contract administrator
29 or a service contract seller.

30 (f) “Service contract reimbursement insurance policy” means
31 a policy of insurance issued by an insurer admitted to do business
32 in this state providing coverage for all obligations and liabilities
33 incurred by a service contract seller under the terms of the service
34 contracts sold in this state by the service contract seller to a service
35 contractholder. The service contract reimbursement insurance
36 policy shall either cover all service contracts sold or specifically
37 cover those contracts sold to residents of the State of California.

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

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

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.