

Assembly Bill No. 2740

CHAPTER 428

An act to amend Sections 9810, 9812.5, 9830.5, 9832.5, 9847.5, 9849, 9851, 9853, 9855.9, 9860, 9862.5, 9863, and 9873 of the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 18, 2014. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

AB 2740, Bonilla. Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

Existing law, the Electronic Appliance Repair Dealer Registration Law, provides for the licensure and regulation of electronic appliance and repair dealers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation and makes a failure to comply with its provisions of a crime. Existing law establishes the bureau under the supervision and control of the Director of Consumer Affairs. Existing law requires the director to administer and enforce those provisions relating to the licensure and regulation of electronic and appliance repair service dealers and persons engaged in various businesses associated with home furnishings. Under existing law the Governor is required to appoint a chief of the bureau to serve under the direction and supervision of the director, as specified.

This bill would extend the operation of the act to January 1, 2019, and would require that the powers and duties of the bureau, as provided, be subject to review by the appropriate policy committees of the Legislature as if these provisions were scheduled to be repealed on January 1, 2019. By extending the operation of some of these provisions, the violation of which is a crime, the bill 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.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation is within the Department of Consumer Affairs, its mission is “to protect and serve consumers while ensuring a competent and fair marketplace,” and its mandate includes making protection of the public

its highest priority in exercising its licensing, regulatory, and disciplinary functions.

(2) The California Bureau of Home Furnishings and Thermal Insulation was established in 1911 in Assembly Bill 547 (Ch. 73, Stats. 1911) in response to unscrupulous manufacturing practices in the mattress industry, which contributed to the fires following the 1906 San Francisco earthquake.

(3) The California Bureau of Electronic and Appliance Repair was established in 1963 under the Electronic and Appliance Repair Dealer Registration Law in Senate Bill 1292 (Ch. 1492, Stats. 1963) in response to growing concerns to consumers and law enforcement agencies about fraud and negligence in the television repair industry.

(4) In 2009, Assembly Bill 20 (Chapter 18 of the Fourth Extraordinary Session of the Statutes of 2009), officially merged the Bureau of Home Furnishings and Thermal Insulation with the Bureau of Electronic and Appliance Repair together to create the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(5) Today, the bureau licenses and regulates over 40,000 businesses, including businesses that engage in the repair of electronics and appliances, the sale and administration of service contracts, and the manufacture, sale, or maintenance of upholstered home furnishings, bedding, and thermal insulation. In addition, the bureau adopts regulations and ensures compliance with the law; inspects businesses and conducts investigations; conducts research on, develops standards for, and tests upholstered furniture, bedding, and thermal insulation products to confirm they meet specified standards; handles consumer complaints; and initiates disciplinary action against businesses that violate statutory or regulatory requirements.

(6) On March 10, 2014, the Assembly Business, Professions and Consumer Protection Committee and the Senate Business, Professions and Economic Development Committee (the committees) held a joint oversight sunset hearing and prepared a background paper on the bureau.

(7) While the hearing and the background paper found the bureau in good standing, it also identified areas for followup and requested the bureau to report back to the committees on specific issues, which include all of the following:

(A) While the bureau is in good fiscal standing, its revenues are projected to stay the same over the next few years and the cost of doing business is projected to rise over time, potentially leading to a long-term deficit. The bureau should report to the committees any planned efforts to increase its revenues and reduce its expenditures, and whether, or when, it might seek a statutory fee increase in the future.

(B) For the 2013–14 fiscal year, the Bureau’s Electronic and Appliance Repair Fund and the Home Furnishings and Thermal Insulation Fund are expected to spend roughly 37 percent and 19 percent of their budgets, respectively, on the pro rata costs to the department. The bureau should advise the committees about the bases upon which pro rata costs are calculated, and whether it could achieve cost savings by dealing with more of its consumer complaints in-house.

(C) Currently, electronic and appliance repair and thermal insulation licenses are renewed annually, and home furnishings licenses are renewed biennially. The bureau should examine the pros and cons of requiring biennial renewals instead of annual license renewals for all licensees.

(D) In its last sunset review report in 1995, the department 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. The bureau should conduct market condition assessments to study both of these markets and determine if current statutes and regulations reflect the needs of the markets, where risk to consumers is the greatest, where resources could be refocused or expanded, and whether continued regulation is clearly necessary across all segments of these markets.

(E) The bureau issues a separate furniture retailer license, bedding retailer license, combination furniture and bedding retailer license, sanitizer license, and custom upholsterer license. The bureau may consider whether it should consolidate any of its licenses, and whether it should continue to regulate, or issue, stand-alone licenses to sanitizers and custom upholsterers.

(F) The bureau has reported high product failure rates, which are primarily attributed to technical violations of flammability, product labeling, and feather and down standards. The bureau should reexamine its testing protocols to ensure that it has the information it needs to appropriately identify areas of highest risk to consumers, and reexamine its standards, especially feather and down and product labeling standards, to determine if some standards could be relaxed, presuming there is no appreciable impact on consumer safety, whether standards should be clarified or better advertised, or whether penalties for violations are too low to act as a proper deterrent.

(G) The bureau is scheduled to go live on the department's BreEZe system in late 2015. The bureau should update the committees on the status of its implementation of BreEZe, including whether the system will accommodate the bureau's current and future needs.

(b) It is the intent of the Legislature that the bureau examine and respond to the issues and recommendations specified in subparagraphs (A) to (G), inclusive, of paragraph (7) of subdivision (a) that were identified in the background paper, and report back to the committees by July 1, 2015, with its findings.

SEC. 2. Section 9810 of the Business and Professions Code is amended to read:

9810. (a) There is in the Department of Consumer Affairs a Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter and Chapter 3 (commencing with Section 19000) of Division 8.

(b) The Governor shall appoint, subject to confirmation by the Senate, a chief of the bureau at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(c) Every power granted to or duty imposed upon the director under this chapter and Chapter 3 (commencing with Section 19000) of Division 8 may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe.

(d) Whenever the laws of this state refer to the Bureau of Electronic Repair Dealer Registration or the Bureau of Electronic and Appliance Repair, the reference shall be construed to be to the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(e) Notwithstanding any other law, the powers and duties of the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, as set forth in this chapter and Chapter 3 (commencing with Section 19000) of Division 8, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter and Chapter 3 (commencing with Section 19000) of Division 8 were scheduled to be repealed on January 1, 2019.

SEC. 3. Section 9812.5 of the Business and Professions Code is amended to read:

9812.5. The director shall gather evidence of violations of this chapter and of any regulation established hereunder by any service contractor, whether registered or not, and by any employee, partner, officer, or member of any service contractor. The director shall, on his or her own initiative, conduct spot check investigations of service contractors throughout the state on a continuous basis. This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 4. Section 9830.5 of the Business and Professions Code is amended to read:

9830.5. (a) Each service contractor shall pay the fee required by this chapter for each place of business operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service contractor, including name, address, retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), a copy of the certificate of qualification as filed with the Secretary of State if the service contractor is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service contractor is a partnership, identifying data shall be stated for each partner. If the service contractor is a private company that does not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each

of the officers and directors of the company as well as for the individual in charge of each place of the service contractor's business in the State of California, subject to any regulations the director may adopt. If the service contractor is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient for purposes of providing data for each of the officers and directors of the corporation or company to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

(b) A service contractor who does not operate a place of business in this state but who sells, issues, or administers service contracts in this state, shall hold a valid registration issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 5. Section 9832.5 of the Business and Professions Code is amended to read:

9832.5. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service contractor shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service contractor shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay all accrued and unpaid delinquency and renewal fees.

(d) Renewal is effective on the date that the application is filed, the renewal fee is paid, and all delinquency fees are paid.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend, by not more than six months, the date fixed by law for renewal of a registration, except that, in that event, any renewal fee that may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2019, deletes or extends that date.

SEC. 6. Section 9847.5 of the Business and Professions Code is amended to read:

9847.5. (a) Each service contractor shall maintain those records as are required by the regulations adopted to carry out the provisions of this chapter for a period of at least three years. These records shall be open for reasonable inspection by the director or other law enforcement officials.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 7. Section 9849 of the Business and Professions Code, as amended by Section 99 of Chapter 332 of the Statutes of 2012, is amended to read:

9849. (a) The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing on a cease and desist order against a service dealer or service contractor or to render a decision to suspend, revoke, or place on probation a registration.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 8. Section 9849 of the Business and Professions Code, as amended by Section 100 of Chapter 332 of the Statutes of 2012, is amended to read:

9849. (a) The expiration of a valid registration shall not deprive the director of jurisdiction to proceed with any investigation or hearing on a cease and desist order against a service dealer or to render a decision to suspend, revoke, or place on probation a registration.

(b) This section shall become operative on January 1, 2019.

SEC. 9. Section 9851 of the Business and Professions Code, as amended by Section 101 of Chapter 332 of the Statutes of 2012, is amended to read:

9851. (a) The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer or service contractor in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining that conduct.

(b) The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 10. Section 9851 of the Business and Professions Code, as amended by Section 102 of Chapter 332 of the Statutes of 2012, is amended to read:

9851. (a) The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a service dealer in violation of the provisions of this chapter, or any regulation thereunder, shall, on application of the director, issue an injunction or other appropriate order restraining that conduct.

(b) The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

(c) This section shall become operative on January 1, 2019.

SEC. 11. Section 9853 of the Business and Professions Code, as amended by Section 103 of Chapter 332 of the Statutes of 2012, is amended to read:

9853. (a) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer or service contractor is deemed to be a conviction within the meaning of this article. The director may suspend, revoke, or place on probation a registration, or may deny registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code, allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 12. Section 9853 of the Business and Professions Code, as amended by Section 104 of Chapter 332 of the Statutes of 2012, is amended to read:

9853. (a) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer is deemed to be a conviction within the meaning of this article. The director may suspend, revoke, or place on probation a registration, or may deny registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) This section shall become operative on January 1, 2019.

SEC. 13. Section 9855.9 of the Business and Professions Code is amended to read:

9855.9. This article shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 14. Section 9860 of the Business and Professions Code, as amended by Section 105 of Chapter 332 of the Statutes of 2012, is amended to read:

9860. (a) The director shall establish procedures for accepting complaints from the public against any service dealer or service contractor.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 15. Section 9860 of the Business and Professions Code, as amended by Section 106 of Chapter 332 of the Statutes of 2012, is amended to read:

9860. (a) The director shall establish procedures for accepting complaints from the public against any service dealer.

(b) This section shall become operative on January 1, 2019.

SEC. 16. Section 9862.5 of the Business and Professions Code is amended to read:

9862.5. (a) If a complaint indicates a possible violation of this chapter or of the regulations adopted pursuant to this chapter, the director may advise the service contractor of the contents of the complaint and, if the service contractor is so advised, the director shall make a summary investigation of the facts after the service contractor has had reasonable opportunity to reply thereto.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 17. Section 9863 of the Business and Professions Code, as amended by Section 108 of Chapter 332 of the Statutes of 2012, is amended to read:

9863. (a) If, upon summary investigation, it appears probable to the director that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer or service contractor accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer or service contractor declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 18. Section 9863 of the Business and Professions Code, as amended by Section 109 of Chapter 332 of the Statutes of 2012, is amended to read:

9863. (a) If, upon summary investigation, it appears probable to the director that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

(b) This section shall become operative on January 1, 2019.

SEC. 19. Section 9873 of the Business and Professions Code, as amended by Section 110 of Chapter 332 of the Statutes of 2012, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) (1) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than

one hundred sixty-five dollars (\$165) for each place of business in this state. The initial registration fee for a service contractor is not more than seventy-five dollars (\$75) for each place of business in this state.

(2) The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred twenty-five dollars (\$325) for each place of business in this state. The initial registration fee for a person who is a service contractor and engages in business as either an electronic repair industry service dealer or an appliance repair industry service dealer is not more than two hundred forty dollars (\$240) for each place of business in this state.

(3) The initial registration fee for a person who engages in both the electronic repair industry and the appliance repair industry as a service dealer and is a service contractor is not more than four hundred dollars (\$400) for each place of business in this state.

(4) A service dealer or service contractor who does not operate a place of business in this state, but engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(b) (1) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars (\$165) for each place of business in this state, if renewed prior to its expiration date. The annual registration renewal fee for a service contractor is seventy-five dollars (\$75) for each place of business in this state, if renewed prior to its expiration date.

(2) The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred dollars (\$300) for each place of business in this state.

(3) The annual renewal fee for a service dealer who engages in the electronic repair industry and the appliance repair industry and is a service contractor is not more than three hundred seventy-five dollars (\$375) for each place of business in this state.

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

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

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2019, deletes or extends that date.

SEC. 20. Section 9873 of the Business and Professions Code, as amended by Section 111 of Chapter 332 of the Statutes of 2012, is amended to read: 9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars (\$165) for each place of business in this state. The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred twenty-five dollars (\$325).

(b) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars (\$165) for each place of business in this state, if renewed prior to its expiration date. The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred dollars (\$300).

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

(d) This section shall become operative on January 1, 2019.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.