

MINUTES

BUREAU OF HOUSEHOLD GOODS AND SERVICES ADVISORY COUNCIL MEETING

Department of Consumer Affairs – DCA HQ2
1747 North Market Blvd, Room 186, Sacramento, CA 95834
November 7, 2019
9:00am – 11:00am

Attendees:

Advisory Council Members: Pascal Benyamini, Public
Sharron Bradley, Industry
Burt Grimes, Industry
Chris Higdon, Industry
Stephen McDaniel, Industry
Donald Lucas, Public
Judy Levin, Public
Antoinette Stein, Public
Steve Weitekamp, Industry

Bureau and Department Staff: Nicholas Oliver, Chief
Rita Wong, Deputy Chief
Karen Skelton, Licensing Manager
Diana Godines, Policy Manager
Yeaphana La Marr, Policy Manager
Brittany Bell, Personnel Liaison
Winson Luong, Enforcement Analyst
Carl Beermann, DCA Budgets
Jacqueline Castro, Licensing Analyst
Steve Fischer, Flammability Engineer
Sue Xu, Flammability Engineer

Teleconference Participants: Chris Carlton, Republic Moving and Storage
Several stakeholders participating intermittently

I. Welcome and Introductions – Bureau Chief Nicholas Oliver

Chief Oliver began the meeting by welcoming everyone in attendance. Chief Oliver announced the council is ending its two-year term and thanked the council members for their service. The newly appointed Director of the Department of Consumer Affairs (DCA) Kimberly Kirchmeyer and Chief Oliver will be reviewing the applications to organize a new council for the next term. The Chief explained once the council is selected the Bureau will make an announcement and the meeting proceeded to the next agenda item.

II. Operations Update

a. Budgets – Carl Beermann

Carl Beermann introduced himself as a Budget Analyst from the DCA to present the Bureau's fund conditions and where the Bureau falls within the budget. Mr. Beermann informed the council that accounting is working on closing out 2018-2019 and so preliminary data is available for 2018-2019. Mr. Beermann discusses the statewide issues of timely reporting on finances and how the DCA fiscal office is working to develop its own reporting system to produce an easy-to-read data set on a monthly basis. Mr. Beermann continues by giving a brief overview of the Bureau's fund conditions. There are three funds for the Bureau: Home Furnishings and Insulation (HFTI), Electronic and Appliance Repair (EAR), and Household Movers (HHM). First is the beginning balance, which starts at any given fiscal year, revenue (licensing, renewal fees, fines, etc.), any additional costs and expenditures, and the fund balance at the end of that fiscal year. Mr. Beermann states all three fund conditions have a healthy reserve. Council Member Burt Grimes inquired why the HFTI fund's reserves were not as high as the other two funds. Mr. Beermann explained that there was no need for concern because the HFTI fund typically spends \$900,000 less per year than what was appropriated.

b. Personnel – Deputy Chief Rita Wong

Deputy Chief Rita Wong begins by announcing the upcoming retirement of three long-term employees: Carrie Cathalifaud, Laboratory Supervising Chemist, Zenaida Mercado, Inspector, and Karen Skelton, Licensing Manager. Deputy Chief Wong continues by informing the council the Bureau has also filled a number of vacancies including a Research Data Specialist in the Policy Unit which will focus on Household Movers Fee Schedule and Max 4 Tariff rate studies. The Bureau internally promoted a Special Investigator to Supervising Investigator of Southern California, which is new to the Bureau as previously there has not been a supervisor in the Southern region. The Field Unit has also internally promoted its Staff Services Analyst to an Associate Governmental Program Analyst who will be responsible for field support. The Bureau's Compliance Unit has also hired two new Staff Services Analysts for processing and investigating complaints as well as two new front office Support Services Office Technicians: one to support complaint intake and another for front counter and Bureau-wide support. Future recruitments include hiring a Supervising Special Investigator in

the Northern region as well as another four Special Investigators throughout the state of California. Deputy Chief Wong informs the council the Bureau has recently received approval to reclassify the Chemist series in the laboratory into Environmental Scientists classifications including one Senior Environmental Scientist (Supervisory).

Chief Oliver elaborates on the reclassification of Chemists to Environmental Scientists explaining the candidate pool for the Chemist classification is small and only utilized by a couple of state agencies. The Environmental Scientist classification utilizes a broader scope of science degrees and backgrounds thus producing a much larger candidate pool. The supervisory Environmental Scientist will replace Carrie's Supervising Chemist position.

III. Statistical Overview

a. Licensing

Attachment 1 – Presented by Karen Skelton

Karen Skelton provided an overview of Bureau licensing statistics. Ms. Skelton begins by explaining there is a decrease in service contracts which is partially represented by phone carriers which go in and out of business, as well as major retailers recently going out of business. Several major retailers have down-sized as well. Karen gave the council statistics on monthly averages of licenses issued by the Bureau including 103 Electronic and Appliance Repair licenses, 137 Home Furnishings and Thermal Insulation licenses, and 19 Household Mover permits. There has been an uptick in the last few months due to restoration companies applying. Ms. Skelton informs the council of her new geographical breakdown of Licensing statistics providing information on how many importers are in California versus other states and how many manufacturers are in or outside of California, as well as overseas importers. Ms. Skelton announced the Bureau has consolidated all four HHM exams into one and will only offer one permit type now rather than the several types of permits previously offered for HHM. This consolidation has contributed to a higher exam passing rate and also illustrates a greater level of industry members coming into licensure and compliance. Ms. Skelton also reported the Bureau has collected \$1.76 million so far in revenue from quarterly reports.

b. Consumer Complaints

Attachment 2 – Presented by Winson Luong

Winson Luong provided an overview of Bureau complaint statistics for the current fiscal year (July through November 2019) and continued into enforcement statistics.

c. Enforcement Statistics

Attachment 3 – Presented by Winson Luong

Mr. Luong provided an overview of Bureau enforcement statistics. Council member Sharron Bradley asks if the Bureau's Home Furnishing statistics can be broken down by type of complaint like the Household Mover statistics. Mr. Luong confirms this can be done for the next meeting. Chief Nicholas asked Mr. Luong if he can tell the council what most current Home Furnishing complaints are to which Mr. Luong replied that the majority are contract issues. Council member Steve Weitekamp asked if the Bureau can break statistics down as far as issuing citations against licensed and unlicensed activity so there is data on enforcement against licensed versus unlicensed activity. Mr. Luong confirms this information can be provided at future council meetings.

d. Investigations Statistics

Attachment 4 – Presented by Rita Wong

Deputy Chief Rita Wong provided an overview of Bureau investigation statistics. Council Member Weitekamp applauded the Bureau's actions against 13 hold hostage situations. Council Member Stein asked if there is a way for the Bureau to spread the word since it is a deterrent to make it known of the Bureau's enforcement actions. Chief Oliver responded that the Bureau has been focused on working with publications and press releases for consumers, as well as flyers and social media illustrating information such as what an unlicensed mover looks like. The Bureau is also in the process of recruiting for an outreach position which will revamp the Bureau's outreach plan for all three programs including holding more outreach events and having greater social media presence.

e. Laboratory Testing Statistics

Attachment 5 – Presented by Sue Xu

Sue Xu provided an overview of Bureau laboratory testing statistics. Between July 1, 2019 and October 30, 2019, the laboratory received 42 samples for TB117-2013 tests. Among the tested samples during the period, 93% of the samples passed and 7% failed. The laboratory received 11 mattress samples during the period for the 16 CFR 1633 test, which is the open flame test, and 78% of tested samples passed while 22% failed. The Bureau did not receive any Thermal Insulation samples during this period. The laboratory tested 20 bedding samples during this period with a 100% pass rate. The laboratory reviewed labeling attached to the samples and 14% comply with all requirements while 56% have minor violations, 26% have moderate violations, and 4% have major failures. A minor violation constitutes a deviation from the standards. A moderate violation is when the percentages or components on the labels are incorrect. 61% of completed TB117-2013 test samples were made overseas and 32% of the samples were from California while 7% came from other states. The nine mattresses tested came from California. The laboratory also checked the statements on TB117-2013 products, 91% checked "No" FR chemical boxes and 9% checked "Yes". During this period, the Bureau sent eight samples to DTSC to conduct FR tests and requested documents from the manufacturers. Most of the samples are still in progress, three samples are cleared by DTSC and the rest are still being tested.

Council Member Burt Grimes clarified the types of tests at the top of the laboratory statistics page: the TB117-2013 test is the smoldering test and the 16 CFR 1633 test is the open flame test. Council Member Judy Levin asked about the 61% of TB117-2013 samples coming from overseas and if there is data capturing overseas compliance such as if any of the eight samples sent to DTSC were from overseas or if any of the overseas samples checked “Yes” for having FR chemicals. Ms. Xu responded she has a breakdown for FR chemical labeling compliance and in the last two years seven samples failed FR chemical compliance and six of the seven were from overseas. Council Member Levin also asked if those checking “Yes” on FR chemicals are also coming from overseas. Ms. Xu responded those checking “Yes,” are mostly in the United States and check “Yes” because they are unsure whether there are FR chemicals present. Council Member Stein compared the difference at the top of the laboratory statistics between nine bedding samples received and 20 samples tested. Chief Oliver clarified the nine bedding samples are what the field acquired in this period while the 20 samples tested are from samples collected over prior months as testing takes time and it can take months to obtain results.

IV. Legislative Update – Presented by Yeaphana La Marr

Policy Manager Yeaphana La Marr began by informing the Council on the status of legislature; they are currently adjourned and will reconvene January 6, 2020 so any bills that died this year can be revived in January. If any bills are revived, the Bureau will report at the next advisory council meeting. Ms. La Marr informed the council the bill formatting is different from previous publications to combine the chaptered legislative digest with all chaptered amendments so the total impact of each bill can be easily identified. The format will go back to its usual setting next meeting.

Ms. La Marr presented AB 5 solely based on interest from the Household Mover industry; the Bureau is not a subject matter expert on the bill and labor law is enforced by the Division of Labor Standards Enforcement. This bill codifies the three-part legal test formulated in *Dynamex v. Superior Court* to determine whether a worker who performs services for a hirer is an employee or an independent contractor. Subdivisions (b) through (h) of the bill provide exemptions from the ABC criteria. Ms. La Marr clarifies the term “contractor” has a different definition in the Labor Code from how it applies to the Household Mover industry and so questions on this bill would be most appropriately directed to the Division of Labor Standards Enforcement. There are local Labor Commissioner offices throughout California that can be found on the Department of Industrial Relations website. Additionally, Ms. La Marr explains the Practice Act section 19266(a) requires any subhauler to be permitted. This has been long established in the Practice Act therefore AB 5 is not requiring that a subhauler be permitted, the Household Movers Act requires a subhauler be permitted. Council member Weitekamp expands on this statement by clarifying that one would be incorrect to believe the regulatory body sees all permitted carriers as having equal standing with other permitted carriers and therefore the idea there is no need to register as a subhauler, when any permitted carrier can contract with any other permitted carrier for work, would also be inaccurate. A telephone participant asked if a mover is employing what used to

be a sub-contractor, if that sub-contractor is not registered as a licensed mover then will the mover company be subject to fines for using an unlicensed mover? Ms. La Marr stated this policy is not new and moving companies have already been subject to this penalty and referred again to the Practice Act section 19266(a) as this has been a longstanding requirement.

Ms. La Marr presented AB 496, an omnibus bill that mostly replaces gender pronouns with gender neutral terminology. This bill also requires the Bureau to post enforcement information about Household Movers to the Bureau's website which has been a requirement for the Bureau's other programs through previous Practice Acts. Ms. La Marr also addressed a previous question about posting unpermitted enforcement information and the language in section 27 specifically states the Bureau must post on licensees and registrants, therefore restricting the Bureau from posting on unlicensed activity.

Ms. La Marr presented AB 1296, previously titled "Tax Recovery in the Underground Economy Criminal Enforcement Program". This bill would have created an enforcement program within the Department of Justice to recover lost revenue due to the underground economy as well as enforce laws governing those who participate in the underground economy. This bill was amended, renamed, and the language was moved from the Government Code to the Unemployment Insurance Code. There were two task forces that previously existed to address this issue and so this bill now amends Unemployment Insurance Code to add the duties of the proposed coalition to the duties of the existing Joint Enforcement Strike Force on the Underground Economy, of which the Department is already a member, and allows information sharing with the Labor Enforcement Task Force.

Ms. La Marr presented SB 358 which makes technical changes to Labor Code 2810.3, which states responsibilities and obligations of a "client employer", i.e. a business that uses the services of a labor contractor. The amendments reflect passage of SB 19. This bill also adds vehicles that are regulated by the Department (Bureau) to the vehicles for which the Department of Motor Vehicles may regulate the safe operation.

Ms. La Marr presented SB 391, the Bureau's bill. This bill allows special investigators and supervising special investigators to issue notices to appear for misdemeanor offenses of the Household Mover Act. This bill is effective January 1, 2020. The Bureau is now one of three entities within the entire DCA allowed to issue these notices. This bill is to assist our special investigators when law enforcement resources are not available, and during stings or sweeps.

Ms. La Marr presented S. 3551, the federal bill that would make the Bureau's TB 117-2013 standard the federal flammability standard for bedding products, upholstered furniture, upholstered furniture designed for use by a child. This bill is awaiting a floor vote, it will be packaged with other consumer protection bills, and a vote is expected later.

V. Regulations Update - Presented by Yeaphana La Marr and Diana Godines

Ms. La Marr started with an update on the AB 2138 regulations. The update consists of amendments to Substantial Relationship Criteria and Rehabilitation Criteria to comply with AB 2138 (Chiu, Chapter 995, Statutes of 2018). These amendments are going through executive review at DCA. By mandate these amendments will have to be effective by July 1, 2020.

Ms. La Marr also gave an update on household mover regulations informing the council the initial regulatory proposal for household movers, which addresses enforcement and 2138, was approved by our attorney to move forward in August. This proposal is also currently going through DCA executive review.

Policy manager Diana Godines gave an update on the package for law label regulations which are still underway. The rulemaking process can take up to 2 years and the Bureau anticipates it will take this long due to the detail needed to make the regulations clear and easy to understand.

VI. New Law Implementation Update – Presented by Yeaphana La Marr

Ms. La Marr discussed the previous council meeting where the industry was given time to add more questions to the FAQ. A new FAQ was posted in October and an email went out to the interested parties list. A summary of the revisions can be found on the final page of the FAQ for easy identification of what changes were made.

Ms. La Marr clarified with the council that the Bureau's name change went into effect on January 1, 2019 so the change has already taken place. However, to utilize current stock of labels, the Bureau allowed a one-year grace period and will begin enforcing this regulation January 1, 2020. With regulatory packages taking approximately two years to be adopted, more changes could come in two years.

VII. Electronic Appliance and Repair Update - Presented by Deputy Chief Rita Wong and Karen Skelton

Deputy Chief Rita Wong presented an interlock ignition device (IID) update to the council. The Bureau has been working with the Department of Motor Vehicles and the Bureau of Automotive Repair to determine the best ways to address the IID industry based on current regulations. The Bureau has participated in many cross-departmental meetings and sharing information to be able to develop regulations in the future for both the Bureau and the Bureau of Automotive Repair. A stakeholders meeting was hosted by the Department of Motor Vehicles that the Bureau was able to attend and provide information to IID manufacturers which was related to licensing requirements at the Bureau. The Bureau was able to clarify that licensure delinquency is not a result of Bureau processing times. The Bureau takes typically two to three weeks to process applications and if renewal fees are being processed online then the process takes 24 hours. Overall a great relationship is being built between the three departments.

Ms. Skelton briefed the council on service contract requirements. Ms. Skelton explained SB 1483 had service contract language that had delayed implementation. The biggest change is the Bureau having regulatory authority over consumer goods. Previously, when a request for a new consumer product to be added to the approved consumer goods list, it would have to go through legislation. What is used as the definition of consumer goods is in the Song-Beverly Consumer Warranty Act California Civil Code Section 1791 which is, “any new product that is used, bought, or leased for personal, family, or household purposes except for clothing and consumables. Consumer goods shall include new and used assistive devices sold in retail.” Ms. Skelton continued that shoes fall under clothing and will not be regulated by the Bureau. The Bureau expects to have an influx of new licensees due to the broadened definition of consumer goods. Ms. Skelton stated contracts must contain a clear description and identification of the product as indicated in the Song-Beverly Consumer Warranty Act.

VIII. Home Furnishings and Thermal Insulation Update – Presented by Diana Godines

Ms. Godines informed the council the FAQs have been updated and examples of law labels are available on our website including sanitation label and the flammability label with the chemical statement which is under review. Ms. Godines also informed the council there was a revision in October to the booklets online correcting a label to reflect the Bureau’s name change.

Council Member Burt Grimes inquired if law labels are going to be required to have the Bureau’s new name on them. Ms. Godines informed the council the new name change went into effect January 1, 2019, and the Bureau gave the industry one year to utilize current stock; the new name requirement will be enforced starting January 1, 2020. Ms. Godines continued regarding SB 1483, an advisory went out on the new name change and it affects all three Bureau programs. The name must be reflected on receipts, invoices, notices to consumers, and other requirements can be found on the advisory which is posted on the Bureau’s website.

IX. Household Movers Update – Presented by Yeaphana La Marr

Ms. La Marr began by informing the council agenda item 9a is an Industry Advisory titled, “Moving Household Goods – Who Is Required to Hold A Permit?”. The intended audience for the advisory is unpermitted movers, especially those who may not be aware they are required to obtain a permit, those whose business model is not strictly that of a household mover, or those who also need to have federal operating authority. The advisory specifically addresses restoration companies, brokers, inter-state household movers, and storage containers (or pods). A section on the potential penalties for operating without a permit precedes the business model specific information and starts on page one of the advisory. The advisory was posted to the website and an email blast went out to the Bureau’s interested parties lists on Tuesday, November 5, 2019. Chief Oliver asked Ms. La Marr to summarize the highlights of the advisory for those who may still be noncompliant. Ms. La Marr referred to Business and Professions Code 19235 which states, “A household mover shall not engage in the

business of transportation of used household goods and personal effects for compensation by motor vehicle over any public highway in this state, except in accordance with the provisions of this chapter, which is enacted under the power of the state to regulate the use of public highways.” There are no exemptions to this. Furthermore, Business and Professions Code 19228 (b) makes violations of any rules, regulations, general orders, and the tariff a violation.

Ms. La Marr continued with the Tariff update for 2020. The consumer priced index data that we use to calculate the updated rates on the Tariff are scheduled to be released by the Bureau of Labor Statistics on November 14, 2019. Ms. La Marr informed the council she anticipates this year’s update being issued in time for use by January 1, 2020.

X. Public Comment on Items Not on The Agenda

Jacob Gilroy made a statement on behalf of Servpro Industries, LLC. Mr. Gilroy formally stated on the record the company he represents has additional questions and is looking forward to working with the Bureau and DCA staff on moving forward with the rule-making process. Mr. Gilroy stated there are many unique and complex situations in the restoration process and so the business would like the opportunity to have permit requirements of restoration companies temporarily stayed while working through the industry questions.

The Next Advisory Council Meeting is scheduled for March 12, 2020.

Meeting Adjourned.

Attachment 1
LICENSING STATISTICS
1st Quarter

Electronic and Appliance Repair Registrations				
	2016-17	2017-18	2018-19	2019-20
Appliance Service Dealers	2,621	2,632	2,634	2,627
Electronic Service Dealer	5,013	4,914	4,849	4,514
Combination Electronic/Appliance Service Dealer	624	583	557	553
Service Contract Administrator	44	47	50	55
Service Contract Seller	11,575	12,633	12,026	11,915
Total Active EAR Registrations	19,877	20,809	20,152	19,664

Household Furnishings and Thermal Insulation Licenses				
	2016-17	2017-18	2018-19	2019-20
Furniture Retailers	2,282	2,057	2,121	2,053
Bedding Retailers	1,625	2,033	2,172	2,234
Furniture & Bedding Retailers	11,782	11,872	11,554	11,214
Custom Upholsterers	506	497	483	466
Supply Dealers	130	110	100	93
Importers (includes overseas Manufacturers)	4,779	5,096	5,339	5,589
Manufacturers	1,508	1,530	1,522	1,441
Sanitizers	12	12	14	24
Wholesalers	172	196	188	180
Thermal Insulation Manufacturers	116	109	107	114
Total Active HFTI Licenses	22,912	23,512	23,600	23,408

Geographic Breakdown of Importers/Manufacturers/Wholesalers as of 10/30/19	
Importer – California	514
Importer – Other States	649
Importer/Manufacturer – Overseas	4,413
Manufacturer – California	672
Manufacturer – Other States	746
Wholesalers - California	137
Wholesalers – Other States	43
Wholesalers – Overseas	2

Household Movers Permits				
	2016-17	2017-18	2018-19	2019-20
Permits Issued			36	29
Exams Administered			36	34
Exam Pass Rate			64%	88%
Total Active HHM Permits			936	986

Attachment 2
CONSUMER COMPLAINT STATISTICS

Household Movers Consumer Complaints		
Year	OPENED	CLOSED
2015-16		
2016-17		
2017-18		
2018-19	203	181
2019-20*	54	48

Electronic and Appliance Repair Consumer Complaints		
Year	OPENED	CLOSED
2015-16	678	758
2016-17	582	582
2017-18	1019	1014
2018-19	528	500
2019-20*	185	77

Household Furnishings and Thermal Insulation Consumer Complaints		
Year	OPENED	CLOSED
2015-16	299	303
2016-17	237	248
2017-18	288	281
2018-19	158	157
2019-20*	79	38

**Attachment 3
BEAR/BHFTI ENFORCEMENT STATISTICS**

TELEPHONE DISCONNECTS ORDERED			
Year	EAR	HFTI	Total
2015-16	78	19	97
2016-17	42	16	58
2017-18	48	17	65
2018-19	15	9	24
2019-20*	4	0	4

INTERNAL CASES (Investigations)						
OPENED				CLOSED		
Year	EAR	HFTI	Total	EAR	HFTI	Total
2015-16	1,048	584	1,632	1,109	607	1,716
2016-17	730	451	1,181	790	418	1,208
2017-18	624	355	979	705	388	1093
2018-19	400	215	615	434	216	650
2019-20*	133	41	174	126	37	163

CITATIONS ISSUED			
Year	EAR	HFTI	Total
2015-16	985	537	1,522
2016-17	684	402	1,086
2017-18	550	305	855
2018-19	384	230	614
2019-20*	137	37	174

Attachment 4
HOUSEHOLD MOVERS INVESTIGATIONS STATISTICS

July 1, 2019 – October 31, 2019

Household Mover Cases Under Investigation	
Hold Hostage	13
Unlicensed Activity	80
Other	2
Total	95

Hold Hostage Situations	
Resolved	9
Pending	4*
Forwarded to Other Agencies	1*
Total	13

* One case pending with city District Attorney

Cease and Desist Letters Issued	
(Failure of Movers to Cease and Desist will result in Administrative Citations)	24

Attachment 5 LAB STATISTICS

Data for FYTD 07/01/2019 - 10/30/2019

Type Test	Received 07/01/19-10/30/19	Completed Samples 07/01/19-10/30/19	
		Pass	Fail
TB117-2013	42	41 (93%)	3 (7%)
16 CFR 1633	11	7 (78%)	2 (22%)
Thermal Insulation	0	0	0
Bedding (No flammability tests)	9	20 (100%)	0
**Labeling	N/A	Pass 10 (14%), Minor Violation 41 (56%), Moderate Violation 19 (26%), Failure 3 (4%)	
Total	62	---	---

**This category includes labeling results for all products except for Thermal Insulation. From 07/01/2019-10/30/2019.

Type Test	Completed 07/01/19-10/30/19	Manufacturing Locations 07/01/19-10/30/19		
		USA-CA	USA-other states	Overseas
TB117-2013	44	14 (32%)	3 (7%)	27 (61%)
16 CFR 1633	9	9 (100%)	0	0

FR Chemical Labeling and Analysis

Samples Received with the Flame Retardant Chemical Statement (TB117-2013) 07/01/19-06/30/19				
“NO” Chemicals Checked	Contains Chemicals	No Box Checked	FR Doc Request Sent	DTSC Analysis Requested
39	4	0	8	8
91%	9%	0%		

Samples Analyzed with the “NO” Flame Retardant Chemical Statement 07/01/19-06/30/19				
Type Test	Pass		Fail	
	No.	%	No.	%
DTSC Analysis (8)*	3	38	---	---
FR Doc Review (8)**	---	---	---	---

*Review in progress for five components

**In progress