



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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Home Furnishings and Thermal Insulation**
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**Bureau of Electronic and Appliance Repair,
Home Furnishings and Thermal Insulation**
March 2, 2016 – Service Contract Working Group Meeting

Attendees:

Govt. Personnel: Nicole Dragoo, Bureau Licensing Technician
Michelle Linton-Shedd, Bureau Licensing Analyst
Justin Paddock, Bureau Chief
Karen Skelton, Bureau Licensing & Policy Manager
Donald Watts, Bureau Licensing Analyst

Teleconference: Christine Brandt
Scott Cauwels
Donald Erwin
Ken Levine
Steven McDaniel
Jon Tomashoff
David Velazquez
Pamela Williams

Agenda Item #1- Welcome and Introductions

Meeting commenced shortly after 9:00 AM.

Licensing & Policy Manager Skelton opened the meeting by thanking everyone for their participation and welcomed Jon Tomashoff from the Department of Insurance to the group. Ms. Skelton stated that comments will be presented on the report that is produced by the group, and any suggestions, including disagreements or objections to recommendations will be noted.

Ms. Skelton said the general purpose of the group is researching, writing, compiling, and making recommendations about the service contract industry. Taking into account the history, present marketplace, and the future: how do we best regulate, protect consumers, and ensure adequate enforcement? The goal is to identify inconsistencies in regulation and propose how to address them.

As part of the language in Assembly Bill (AB) 2740 (Bonilla, Chapter 428, Statutes of 2014), it was requested that the Bureau conduct market assessments on the industries it regulates. While a general market condition was performed as part of the report entitled “Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation’s 2014 Sunset Review”, due to the complex nature

of the service contract industry, its growth and constant changes, it was decided to do a more in-depth study to include with the Bureau's upcoming Sunset Review report, due in Fall 2017.

Agenda Item #2- Set up meetings for the rest of the year – establish information sharing protocol between meetings

Ms. Skelton asked how far in advance the group would prefer to be notified before meetings. One participant stated that he prefers a few weeks' notice. Ms. Skelton assured the group that she will give at least a month in advance and will utilize Doodle to send a schedule in early April to make sure the dates are convenient for the group. Ms. Skelton asked if any days were off-limits. Two members stated that Mondays and Fridays are not convenient.

Mr. Paddock asked if there would be any industry conferences in 2016 the Bureau should be aware of. Mr. McDaniel said the Florida Service Agreement Association, which pertains specifically to the service contract industry in Florida, is scheduled for September 21-23, 2016, and the National Trade Association for FDIC is scheduled for October 6-7, 2016. In addition, there is a Warranty Chain Management Conference in late March, 2016, and an Extended Warranty & Service Contracts Innovations Conference that takes place in Nashville.

Ms. Skelton listed the following dates as a tentative timeline:

- Week of May 31, 2016: Review outline and topic sections. Make revisions and additions to what the report should contain. Further assignments as needed.
- Week of July 1, 2016: First rough draft of report. Solicit additional comments and revisions.
- Week of August 1, 2016: Second rough draft of report. Additional comments and revisions.
- Week of September 1, 2016: Third rough draft of report. Additional comments and revisions.
- Week of October 1, 2016: Tweak and Finalize report.
- October 13, 2016: Present report to Advisory Council

Mr. Paddock asked Donald Erwin if the dates are set for Professional Servicers Organization of California (PSOC). Mr. Erwin stated that PSOC will be held on May 12-14, 2016.

Agenda Item #3- Reports/Topics (Subject to Agreement)

Ms. Skelton stated that Mr. Paddock had obtained a sample report from Air Resources Board (ARB) who put their drafts online with comments. This allowed for transparency across the board of what was being discussed. The topics are presented on the table under Agenda Item #3 at the following link: http://www.bear.ca.gov/about_us/laws/wga_20160302.pdf

The National Service Contract Regulation history will include past and current legislative and regulatory proposals nationally and for individual states. This will include a matrix of state regulation.

Ms. Skelton noted that at the last Advisory Council Meeting, Mr. Erwin mentioned Senate Bill (SB) 2075, which discussed a utility company who wanted to sell a service contract on a month-to-month basis along with their billing. The law was passed, and then the company pulled out of their program, so subsequently the language was repealed. Ms. Skelton stated that she will post documents on the web, and if anyone else has documents to contribute to please e-mail them to her at karen.skelton@dca.ca.gov so they can be linked and put on the web for access.

The California requirements will include an outline of who is required to register, what information is to be provided, what must be included in a contract, what financial backing alternatives exist and the test methods used to ensure the above. Ms. Skelton stated a copy of the license application, pertinent statutes, and regulations (California Business & Professions Code, California Civil Code and California Code of Regulations) will be included as references to this section.

The California Department of Insurance vs. BEARHFTI regulation will encompass the coverage of vehicle, home protection plans and portable electronic device insurance. The purpose is to define what insurance is versus what a service contract is, and who is regulated under each. This topic will become part of the Bureau's next Sunset Review, and the goal is to make sure it is understandable by legislature. Mr. Paddock stated that the Bureau will use the Report, so if statutory changes are proposed, it would be helpful to identify grey areas between the California Department of Insurance's Portable Electronic Device regulation and service contracts.

The next topic covered Bureau Licensing and Enforcement Challenges. Ms. Skelton stated that it has been a challenge for the Bureau to identify internet companies who are offering to California-based consumers.

The Bureau's goal is to keep track of the relationships between service contract sellers, administrators and obligors as they change, ensure awareness of the contracts in force, the 'blind spot' for administrators of companies that offer and lack of awareness by sellers of what they offer. Some offerings are very vague.

The Glossary of terms will be a "living document," and everyone's input is needed. For example, the word "obligor" is only known to those who are familiar with service contracts. Ms. Skelton posed the question of how does the Bureau handle when there is a conflict in how the term is used, or there is an exemption in one state's law, but regulation in another? Ms. Skelton discussed that there is vagueness in language, and because of that, the consumer may not always be protected.

Agenda Item #4- Additional Report Topics of Discussion/Inclusion

Ms. Skelton stated that in regards to regulated offerings vs. non-regulated offerings, one of the areas that may be considered for a legislative change recommendation is when the Bureau adds a new product to its jurisdiction. This is something that may need to be addressed in the Sunset Report. Pamela Williams asked if the Bureau is considering looking at expanding or making recommendations for the number or categories of products that be covered. Ms. Skelton

responded by stating that this is part of the reason for the working group's formation, to provide alternatives and solutions that can be presented as recommendations. Mr. Paddock stated that it may be valuable to take a vote to question whether or not the list should get bigger, smaller, blanket provision, or stay as is.

Ms. Skelton brought up that another item that is non-regulated are "free" contracts offered by some companies. An example is American Express, who used to offer double-warranty packages if a product was purchased with their card. Since there was no charge to the consumer, the Bureau does not consider a free contract a regulated service contract. Ms. Skelton asked if this needs to be looked at again, or remain status quo. Mr. McDaniel said he believes it is up to the interpretation of the individual regulators deem in the circumstance that it is free, as the definition implies the contract should be sold for consideration. Ms. Skelton responded by stating Bureau law says "sold or offered for sale." Mr. Paddock asked how consideration is deemed with regards to marketing in recent cases, or if it strictly a monetary transaction for the industry. If American Express talked the "free" service contracts up in their advertising to boost sales of product, would that be considered a consideration? Stephen McDaniel stated that under case law that consideration is not strictly limited to monetary compensation. He said that the question becomes "what is the product, and does it still need to comply with product and disclosure requirements?" He added that there are a lot of available programs that embed the "free" contract into an overall program, and there is no separate consideration charged for the service contract piece.

Ms. Skelton stated the topic of adequacy of consumer protection and recourse will discuss the gap in what contracts cover, or the ease in discerning what the consumer is paying in additional fees and what they are receiving in return. The goal is to define that the consumer is receiving value and is also protected. She stated that she would like everyone to read the laws and regulation and identify if there are any gaps, and respond.

Ms. Skelton asked how the Bureau can assess consumer perception and expectation without taking more surveys. At this point in time, the Bureau is not able to fund another survey. However, if anyone knows of surveys that have been conducted that could be used as a reference, that would be helpful. Mr. McDaniel stated that his company's public relations (PR) firm conducted a survey of consumers last year and he will share the results if he is able to obtain them.

The next topic of discussion was the future of the marketplace. Ms. Skelton asked for everyone's input regarding this topic. The main points to be discussed are the growth, marketing strategies and potential offerings. The marketplace has grown considerably since the Market Conditions Survey in 1999. The market used to strictly be composed of retailers and third party administrators, and this is not the case anymore. The Bureau needs to have a strong understanding on areas where the marketplace is growing, in light of the registration population having grown every year since the program started.

Another topic that is pertinent is the relevancy of current statute and regulations. Where is the Bureau lacking in regulatory authority, and what, if anything, is obsolete or needs revision to cover the current market? There were no comments regarding this topic.

Ms. Skelton mentioned that the Bureau had a recent discussion with its legal counsel over arbitration clauses. She learned that Federal law includes interstate commerce and sales from out of state companies). If a service contract is sold from a California-based company, it falls under California arbitration. This has been identified as an issue, and the report will include information regarding the topic. Ms. Skelton also stated that contracts themselves are increasingly longer than they were in the past – where we used to have a two page contract, they are often several pages long to incorporate state variations and additional language. She asked the group why contracts are so varied between states, and if this is status quo.

Mr. Paddock interjected and asked Mr. McDaniel and Mr. Levine if a section on preemption issues can be added to their section on National history. The Magnuson-Moss Warranty Act is not a preemptive statute. It is more of a disclosure and not a regulation concept.

Mr. Paddock asked about recent legal scholarship on adhesion clauses, and if there would be a benefit to codify recent law on adhesion clauses into Bureau statute. He asked if anyone was aware of any periodicals that collect that information, no one was aware of any. There were no further comments.

Ms. Skelton stated that she is putting together an anatomy of a service contract to show what a typical service contract includes. This sample will include the provisions that are required in each contract, and a typical layout of a contract to ensure an understanding of how a service contract is built and what it contains. She will also add in the report appendices the checklist the Bureau uses to ensure compliance with terms, conditions, and provisions that must be included in a service contract. She will be creating a draft and sending it to the working group for comment.

Ms. Skelton asked if there were any more areas that should be included in the report. Mr. Erwin stated that the Bureau takes on the task of everything from lawn mowers to glasses and that they should not be lumped into the same category. He said he feels that each item needs to be individually categorized. Mr. Paddock said that he and Ms. Williams discussed this earlier, and that it is an item that will be voted on during the next teleconference call. Mr. Erwin wanted clarification as to whether or not all of the various items covered under contracts will be listed. Mr. Paddock and Ms. Skelton said that they would. Ms. Skelton said that California Civil Code section 1794.41 uses the term “consumer goods.” When service contracts are discussed under the Civil Code, it is not separated out by product, except for in the cancellation provisions, and all contracts are treated virtually the same, no matter what the product. Some have identified a challenge when adding products piecemeal to the current law, and part of the task of the working group is to come up with recommendations regarding the best way to regulate this in California.

Mr. McDaniel said that California is unique in its list approach. He added that he was involved in optical and if something is not squarely in the list, it results in legislation having to be enacted. He stated that every other state speaks in terms of property and does not have a list of individual products. He said that this may have to do with the overlap of home protection insurance laws and service contract laws. He thinks it would be beneficial to see if California will move more in line with the service contract industry in the rest of the country or if California would like to stick with the list approach.

Ms. Skelton added that she forgot to previously mention that Donald Watts, Bureau Licensing Analyst, and Dale Chasse, Bureau Deputy Chief, have suggested a numbering system to better organize service contracts. Mr. Watts recently contacted an administrator and asked them which of their contracts were still in force. They have not responded to his inquiry, which leads the Bureau to believe that they may not know. Ms. Skelton also mentioned that the Bureau receives partial revisions to contracts without receiving the complete contract. Mr. Paddock added that administrators not knowing which of their contracts are expired is a red flag for enforcement. He said he would like to hear the working groups' thoughts on this matter.

Mr. Levine asked if the seller of the contract will create a unique number, or if the Bureau would assign the number. Mr. Paddock said that it would be beneficial to discuss benefits and/or consequences of both versions. There is more assurance is the Bureau assigns a number. Mr. McDaniel asked if the Bureau number would need to be printed on a contract. Ms. Skelton said that if the Bureau decided to adopt a numbering system, it would have to be printed on the contract for enforcement purposes, in order to track consumer complaints. Mr. McDaniel stated that it may create issues for National programs if a specific California Bureau number is put on the license.

Mr. Erwin asked what would happen in the case a consumer gets the contract in California, but then moves to New York and the contract number has nothing to do with their new state of residence. Mr. Paddock said that the regulatory responsibility was in the state you purchased the product in.

Ms. Skelton asked the working group to please look at the Consumer Guide to Service Contracts posted on the web before the next meeting. She would like feedback on it so she can improve the particular flier. She then asked if there were any other topics that should be put into the report. Mr. Erwin asked if anyone has been in touch with third party administrators or contractors who are the obligor for their contracts. There is an upcoming PSOC convention and there are normally several service contract administrators who attend and it may be beneficial to have someone from the Bureau there to ask for input. Mr. McDaniel said that the working group members represent 90 percent of the service contract industry with respect to obligors, administrators and insurers who insure these programs.

Ms. Skelton asked if there are any other areas that should be included in the report. Mr. Erwin stated that many televisions are made overseas, shipped to the United States, and then after they are sold the manufacturer goes out of business. Mr. Paddock stated that is a policy discussion and the question at hand is "should manufacturers be obligated to have various

insurance provisions such as third party administrators do?" Mr. Erwin stated if the warranty is intact and the manufacturer goes out of business that they can no longer provide parts. The service contractor then has to honor the contract. He added that California state law says any manufacturer who makes the product has to buy the part for seven years. Mr. McDaniel said that New York has a provision in its law that requires a manufacturer to have parts available for specific models for "X" number of years. He said another issue is whether or not a financial responsibility requirement can be imposed on the manufacturer for their Magnuson-Moss Warranty. He stated that a closer look needs to be taken at the Magnuson-Moss Warranty and provisions that apply to state law in connection to this warranty. He agreed that this is something that needs to be discussed. Mr. Paddock stated that the Bureau will put together a discussion document, to see whether or not it needs to be included in the Report.

Agenda Item #5- Open Discussion

There were no further questions or comments.

Agenda Item #6- Adjournment

Ms. Skelton adjourned the meeting shortly after 10:00 AM.