

ASSEMBLY BILL No. 1221

CHAPTER 452

An act to amend Sections 1791 and 1794.4 of the Civil Code, relating to consumer warranties.

[APPROVED by Governor 2021-10-04 Filed with Secretary of State October 04, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1221, Consumer warranties: service contracts: cancellation: disclosures.

Existing law, the Song-Beverly Consumer Warranty Act, provides consumer warranty protection to buyers of consumer goods, including motor vehicles, home appliances, and home electronic products. The act requires a service contract, as defined, to include certain elements, including a clear description and identification of the covered product.

Existing law, the Electronic and Appliance Repair Dealer Registration Law, provides for the registration and regulation of service contractors and, among other things, requires a service contractor to comply with the provisions of the Song-Beverly Consumer Warranty Act described above relating to service contracts. The law makes a violation of its provisions a misdemeanor.

This bill would specify that a service contract may be offered on a month-to-month or other periodic basis and continue until canceled by the buyer or the service contractor and would require a service contract that continues until canceled by the buyer or service contractor to, among other things, disclose to the buyer in a clear and conspicuous manner that the service contract shall continue until canceled by the buyer or service contractor and provide a toll-free number, email address, postal address, and, if one exists, internet website the buyer can use to cancel the service contract. The bill would exempt vehicle service contracts from the above-described provisions. The bill would also define the terms "clear and conspicuous" and "clearly and conspicuously" for purposes of the act. By expanding the scope of the crime of violating the Electronic and Appliance Repair Dealer Registration Law, this 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.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS

FOLLOWS:

SECTION 1. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

- (a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.
- (b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any of these businesses.
- (c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.
- (d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.
- (e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.
- (f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.
- (g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.
- (h) "Lessee" means an individual who leases consumer goods under a lease.
- (i) "Lessor" means a person who regularly leases consumer goods under a lease.
- (j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.
- (k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for consumer goods.
- (l) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.
- (m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).
- (n) "Sale" means either of the following:
 - (1) The passing of title from the seller to the buyer for a price.
 - (2) A consignment for sale.

(o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are intended to assist the limited vision of the person so disabled.

(q) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(r) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.

(s) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

(t) "Member of the Armed Forces" means a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard. Full-time active duty shall also include active military service at a military service school designated by law or the Adjutant General of the Military Department concerned.

(u) "Clear and conspicuous" and "clearly and conspicuously" means a larger type than the surrounding text, or in a contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. For an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable.

SEC. 2. Section 1794.4 of the Civil Code is amended to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contractor to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) If the service contract covers a single product, a clear description and identification of the covered product. If the service contract covers a class of products, a description of the class of products covered by the service contract that is sufficiently clear so the buyer is able to discern the products covered.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) (A) A service contract may be offered on a month-to-month or other periodic basis and continue until canceled by the buyer or the service contractor in accordance with Section 1794.41 and, for electronic and appliance repair dealers, Section 9855.6 of the Business and Professions Code. If the service contract continues until canceled by the buyer or service contractor, the service contract shall do all of the following:

(i) Disclose to the buyer in a clear and conspicuous manner that the service contract shall continue until canceled by the buyer or service contractor and require the buyer's affirmative consent to this provision.

(ii) Disclose to the buyer all alternatives that the seller offering the service contract offers, including any fixed-term service contracts or other service contract basis that does not continue until it is canceled.

(iii) Provide, at a minimum, a toll-free number, email address, postal address, and, if one exists, internet website the buyer can use to cancel the service contract. Cancellation shall not require the use of more than one of these methods to be completed and shall be effective immediately upon receipt of the request for cancellation.

(iv) If the service contract was entered into online, allow the buyer the option to cancel the service contract exclusively online, without engaging in any unnecessary steps that obstruct or delay the buyer's ability to cancel the continuation of the service contract.

(v) (I) Provide for a refund to the buyer of any unearned amounts in accordance with Section 1794.41 and, for electronic and appliance repair dealers, Section 9855.6 of the Business and Professions Code.

(II) The amount of any refund, as well as any cancellation or administrative fees, under this paragraph shall be calculated based on the period, whether month to month or otherwise, for which payment is made and the amount of the payment for the period.

(III) A written notice of cancellation other than notice required by clauses (iii) and (iv) shall not be required to obtain a refund.

(B) This paragraph does not apply to vehicle service contracts.

(4) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(5) A statement of the general obligation of the service contractor in the same language set forth in subdivision (b), with equally clear and conspicuous statements of the following:

(A) Any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs, or remedies that are excluded from the scope of the service contract.

(B) Any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls.

(C) Any additional services that the service contractor will provide.

(D) Whether the obligation of the service contractor includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide.

(E) Whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(6) A step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract including the following:

(A) The full legal and business name of the service contractor.

(B) The mailing address of the service contractor.

(C) The persons or class of persons that are authorized to perform service.

(D) The name or title and address of any agent, employee, or department of the service contractor that is responsible for the performance of any obligations.

(E) The method of giving notice to the service contractor of the need for service.

(F) Whether in-home service is provided or, if not, whether the costs of transporting the product for service or repairs will be paid by the service contractor.

(G) If the product must be transported to the service contractor, either the place where the product may be delivered for service or repairs or a toll-free telephone number that the buyer may call to obtain that information.

(H) All other steps that the buyer must take to obtain service.

(I) All fees, charges, and other costs that the buyer must pay to obtain service.

(7) An explanation of the steps that the service contractor will take to carry out its obligations under the service contract.

(8) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(9) Information respecting the availability of any informal dispute settlement process.

(d) A service contractor may cancel a service contract offered on a month-to-month or other periodic basis only if any of the following occurs:

(1) The buyer fails to make timely payment.

(2) The buyer is otherwise in material breach of the service contract.

(3) The buyer has committed fraud in connection with the service contract.

(4) (A) The service contractor or its affiliate is the obligor under the service contract, and the service contractor or its affiliate is discontinuing this category of service contract no later than 30 days after the effective date of the cancellation.

(B) A cancellation or administrative fee shall not be charged to the buyer for a cancellation pursuant to this paragraph.

(5) (A) Neither the seller offering the service contract nor any of its affiliates is the obligor under the service contract, and the seller is discontinuing its offering of the service contract no later than 30 days after the effective date of the cancellation in favor of a service contract with a different obligor.

(B) A cancellation or administrative fee shall not be charged to the buyer for a cancellation pursuant to this paragraph.

(e) As used in this section:

(1) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another specified entity.

(2) (A) "Affirmative consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer, or the consumer's legal guardian, a person who has power of attorney, or a person acting as a conservator for the consumer, including by a statement or by a clear affirmative action, signifies agreement to the continuous until canceled nature of the service contract.

(B) "Affirmative consent" does not mean any of the following:

(i) Acceptance of a general or broad terms of use, or similar document, that contains descriptions of the coverages under the service contract along with other, unrelated information.

(ii) Hovering over, muting, pausing, or closing a given piece of content.

(iii) Agreement obtained through the use of dark patterns.

(f) Subdivisions (b) and (c) are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

(g) The amendments to this section made by the act adding this subdivision are applicable only to a service contract entered into on or after January 1, 2022.

SEC. 3.

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.