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THIRD READING

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Bill No: AB 1221  
Author: Flora (R)  
Amended: 9/1/21 in Senate  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 11-0, 7/13/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Skinner, Stern, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21

AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 75-0, 5/27/21 (Consent) - See last page for vote

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**SUBJECT:** Consumer warranties: service contracts: cancellation: disclosures

**SOURCE:** Service Contract Industry Council

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**DIGEST:** This bill amends the law applicable to service contracts to allow for such contracts to cover a class of products, rather than a single product, and to be offered on a periodic basis and continue until canceled, as provided.

*Senate Floor Amendments* of 9/1/21 amend the exemption to apply to “vehicle service contracts.”

**ANALYSIS:**

Existing law:

- 1) Establishes the Electronic and Appliance Repair Dealer Registration Law (EAR Law). Therein is created the Bureau of Household Goods and Services (Bureau) located within the Department of Consumer Affairs (DCA) under the supervision and control of the Director of DCA. (Bus. & Prof. Code §§ 9800 et seq., 9810.)

- 2) Regulates service contracts that address the maintenance, replacement, or repair of consumer goods. (Bus. & Prof. Code §§ 9855-9855.9.)
- 3) Defines “service contract” for purposes of the EAR Law to mean a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of consumer goods and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” shall not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services. “Service contract” shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration. (Bus. & Prof. Code § 9855.)
- 4) Defines “service contract seller” as a person who sells or offers to sell a service contract, with certain enumerated exceptions. (Bus. & Prof. Code § 9855 (c).)
- 5) Defines “service contract administrator” as a person responsible for compensating any party to a service contract for claims or repairs. A service contract administrator also performs activities like providing service contract sellers with forms, adjusting claims, and arranging required insurance for service contract sellers. (Bus. & Prof. Code § 9855(b).)
- 6) Defines “service contractor” as a service contract administrator or service contract seller. (Bus. & Prof. Code § 9855(e).)
- 7) Establishes the Song-Beverly Consumer Warranty Act, which sets forth standards for warranties that govern consumer goods, and outlines remedies available to purchasers. (Civ. Code § 1790 et seq.)
- 8) Requires, pursuant to the EAR Law, service contractors to comply with specified provisions of the Song-Beverly Consumer Warranty Act that govern service contracts, cancellation of those contracts, and refunds after cancellation. (Bus. & Prof. Code § 9855.5.)
- 9) Defines a “service contract” for purposes of the Song-Beverly Act as 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, excluding a policy of automobile insurance. (Civ. Code § 1791.)

- 10) Provides, in litigation pursuant to the Song-Beverly Act, for costs and expenses, including attorney's fees, to be awarded to a prevailing buyer. (Civ. Code § 1794(d).)
- 11) Sets forth cancellation and refund rights for motor vehicle, home appliance, and home electronic products. (Civ. Code § 1794.41.)
- 12) Provides for interest to be paid if a buyer cancels a service contract and does not receive a refund within 30 days. (Bus. & Prof. Code § 9855.6)
- 13) Regulates automatic renewal or continuous service offers to consumers in this state, including requirements to clearly present the terms of such offers, secure the affirmative consent of consumers, and to provide adequate notice and cancellation methods. (Bus. & Prof. Code § 17600 et seq.)

This bill:

- 1) Requires a service contract that covers a class of products to include 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) Authorizes a service contract to be offered on a month-to-month or other periodic basis and continue until canceled by the buyer or the service contractor, as provided, except for vehicle service contracts.
- 3) Provides that if the service contract continues until canceled by the buyer or service contractor, it shall do all of the following:
  - a) 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;
  - b) 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;
  - c) 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;
  - d) 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;
- e) 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.
- 4) Provides that the amount of the above refund, as well as any cancellation or administrative fees, 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. A written notice of cancellation other than the notice as required above shall not be required to obtain a refund.
- 5) Defines "clear and conspicuous" and "clearly and conspicuously" to mean 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.
- 6) Defines "affirmative consent" to mean 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. It does not include the following:
- a) 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;
  - b) Hovering over, muting, pausing, or closing a given piece of content; or
  - c) Agreement obtained through the use of dark patterns.
- 7) Authorizes a service contractor to cancel a service contract offered on a month-to-month or other periodic basis, as specified.
- 8) Provides that the above changes are only applicable to a service contract entered into on or after January 1, 2022.

## **Background**

### *Executive Summary*

The Electronic and Appliance Repair Dealer Registration Law establishes the Bureau and authorizes it to regulate registered service contractors who sell service contracts for the repair of a variety of consumer products in California. Retailers are required to hold a valid registration in order to act as a service contract seller. Service contracts generally provide for the pre-paid repair or replacement of specified consumer products. The law also requires a service contractor to comply with the provisions of the Song-Beverly Consumer Warranty Act, relating to service contracts.

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 service contracts to include certain elements, including a clear description and identification of the covered product and a statement detailing the service contractor's obligations.

This bill authorizes service contracts to cover a class of products rather than a single product and allows for service contractors to sell automatically renewing service contracts pursuant to specific guidelines, excluding vehicle service contracts. (NOTE: For a more thorough analysis of this bill, please see the Senate Judiciary Committee analysis.)

## **Comments**

### *Regulation of service contracts in California*

Service contracts (otherwise known as extended warranties or maintenance agreements) cover a wide range of consumer products, including furniture, electronics, appliances, home healthcare products, jewelry, fitness equipment, and eye wear, among many others. In California, the products that are included in the definition of service contracts have expanded overtime on a case-by-case basis. In order to authorize a service contract to be sold with a product, legislative approval is necessary.

### *Expanding and clarifying the scope of service contracts in California*

This bill makes two changes to the existing law detailed above. First, it explicitly provides for service contracts that cover a class of products, rather than simply a

single product. The Song-Beverly Act defines a service contract as a contract for “services relating to the maintenance or repair of *a consumer product*” and requires it to contain a “clear description and identification of *the covered product*.”

Because of this phrasing, it is unclear whether a service contract could cover more than one specific product.

The Service Contract Industry Council, the sponsor of this bill, explains the need for the provision:

AB 1221 is focused on the outdated language in California’s laws governing service contracts that requires the specific identification of each individual product covered by a service contract. Because of this language, a service contract is not able to cover a class of products but must issue one contract per covered product. Such a scenario is not helpful to consumers and is inconsistent with the treatment of the service contract industry in the rest of the country.

This bill amends the provision of the act to add “if the service contract covers a single product,” to the requirement that the covered product is clearly described, and then explicitly provides that if a service contract covers a class of products, the class of products covered must be described in a manner sufficiently clear so that the buyer can discern what is covered.

The second change involves the period for which service contracts can run. The existing definition of service contract specifies that the contract applies “over a fixed period of time or for a specified duration,” and a service contract is required to indicate “[the service contract’s] duration measured by elapsed time or an objective measure of use.” This language can be read to suggest that it is impermissible for a service contractor to offer a contract that automatically renews for additional fixed terms.

This bill explicitly authorizes a service contract to be “offered on a month-to-month or other periodic basis and continue until canceled by the buyer or the service contractor.” The bill provides specific consumer protections for continuous service contracts. However, the bill specifically excludes from this provision vehicle service contracts. Such contracts are directly regulated by the California Department of Insurance and vehicle contracts are explicitly restricted from being offered on this periodic or continuous basis. (Ins. Code § 12800 et seq.)

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund\*)
- Department of Justice: Unknown workload cost pressures to enforce the provisions of this bill. (Special fund\*\*)

\* Trial Court Trust Fund

\*\* Unfair Competition Law Fund

**SUPPORT:** (Verified 8/26/21)

Service Contract Industry Council (source)

**OPPOSITION:** (Verified 9/3/21)

Consumer Federation of California

**ARGUMENTS IN SUPPORT:** According to the Service Contract Industry Council, “AB 1221 provides clarity as to the permissibility of month-to-month and/or continuous until cancelled service contracts in California. Many consumers purchase service contracts in connection with services provided on a month-to-month or continuous until cancelled basis. For example, cell phones are often purchased through a monthly pay option and it is convenient for a consumer to be able to include service contract coverage on their cell phone and have the cost for that coverage billed on the consumer’s monthly cell phone bill along with the wireless minutes and cell phone purchase price. While these programs have been offered in California for years under existing state law, the industry would like to see more clarity in the service contract laws providing clear authorization of these service contract programs under California law.”

**ARGUMENTS IN OPPOSITION:** The Consumer Federation of California writes, “Many consumers have been unfairly taken advantage of by companies offering free trials or monthly services that automatically renew without the consumers knowledge. These consumers often do not notice that they are being

charged until it is too late, once their bank accounts have been repeatedly charged or even completely drained. Given these existing issues, CFC opposes extending these same kinds of auto-renewal contracts into the service contract space by allowing contracts to continue until cancelled by the consumer. Existing law's definition of service contract specifies that these contracts apply 'over a fixed period of time or for a specified duration,' ensuring that consumers are protected from endless charges for services that they do not want or no longer need. AB 1221 would upend these existing protections and allow these nefarious practices to invade yet another industry and hurt more consumers. While AB 1221 does specify that companies must disclose to consumers if a service contract will continue until cancelled, the bill's definition of 'clear and conspicuous' disclosure is significantly lacking and will harm consumers."

ASSEMBLY FLOOR: 75-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood

NO VOTE RECORDED: Maienschein, Mullin, Rendon

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113  
9/3/21 15:24:33

\*\*\*\* END \*\*\*\*