CLIENT ALERTS & INSIGHTS

In California, Written Consumer Warranties Can No Longer Commence Before Delivery

JULY 20, 2023

Authors: Lauryn T. Robinson

On July 1, 2023, an amendment to California's Song-Beverly Consumer Warranty Act ("Song-Beverly" or the "Act") took effect, prohibiting express warranties for consumer goods sold in California from beginning before the date of delivery. The amendment is intended to prevent manufacturers from starting the warranty clock on the date of sale, or while the item is in transit, and before it reaches the consumer.

Practically speaking, this amendment does not impact most in-store purchases as the sale and delivery dates are typically the same; however, companies should pay careful attention to online sales to ensure that written warranties comply with the new law.

Overview of the Amended Law

Song-Beverly is California's primary law governing consumer warranties. It applies to "consumer goods," defined as any new or used product that is used, bought, or leased for personal, family, or household purposes. This definition includes household appliances and vehicles, but excludes clothing and consumable products such as cosmetics, cleaning products, or food.

The Act provides, *inter alia*, that every consumer product carry an implied warranty of merchantability and it gives retailers a right of indemnity against manufacturers. The Act also limits a retailer's ability to disclaim implied warranties and states that any express warranties, though not required, must fully and conspicuously disclose the terms of the warranty in simple, readily understood language.

Historically, retailers have used the date of purchase as the beginning of a warranty period. This caused some complications during the COVID-19 pandemic, when shipping and inventory issues led to lengthy delays for certain items. The amended law, passed September 22, 2022, was enacted as a result. It provides: "A manufacturer, distributor, or retail seller shall not make an express warranty with respect to a consumer good that commences earlier than the date of delivery of the good. This section does not limit an express warranty made before July 1, 2023."

Although California is the first state in the country to impose this kind of restriction in the retail context, it does have some precedent in other settings. For example, several jurisdictions (e.g., New York, Maine, and Arizona) have prohibited motor vehicle warranties from beginning before the vehicle is delivered since the early-2010s.

There is a private right of action under Song-Beverly, which allows injured buyers to recover damages, reasonable attorney's fees and costs, and (in individual actions only-not class actions) a civil penalty of up to two times the amount of damages. Damages and civil penalties are based on a

variety of factors including whether the company willfully violated the Act and the replacement and/or reimbursement costs associated with a particular product.

How to Comply

Impacted companies should promptly review any consumer-facing materials discussing express warranties, to ensure that they clearly state that such warranties do not begin until delivery.

At the same time, they should consider practical issues relating to compliance, such as:

- Whether to apply the amended warranty period nationwide, or only in California, and how to disclose and implement any geographic limitations;
- Whether or how the company will know exactly when an item is delivered (i.e., when the warranty period begins);
- Whether the company has a system for effectively capturing a warranty's effective date;
- Warranted products sold by third parties; and
- Whether or how to notify impacted customers about the policy changes.

Companies should consult knowledgeable counsel to ensure compliance with this amendment. The Benesch team has extensive experience in this area and is here to help.

For more information, please contact a member of Benesch's Litigation Practice Group or Retail & E-Commerce industry team.