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JAN 05 2015

December 30, 2014

OPINION COMMITTEE

FILE # ML-47680-15

I.D. # 047680

RQ-0001-KP

The Honorable Greg Abbott
Attorney General, State of Texas
ATTN: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Service Contracts; Cancellations and Refunds

Dear General Abbott:

I write today regarding differing interpretations of Occupations Code 1304.1581, which governs cancellations and refunds of service contracts.

Senate Bill 1169, 82nd Legislature, Regular Session, modified Texas law regarding service contracts. Recently, the Senate Committee on Business and Commerce was contacted by a service contract provider that reached an impasse in negotiations with an automobile dealership regarding terms of a vehicle service contract. Following passage of Senate Bill 1169, the dealership rejected the service contract provider's modified service contract, which had been updated to conform to changes made to Section 1304.1581 of the Occupations Code. The dealership requested removal of terms specifying that the amount of any previously paid claims would be deducted from funds remitted to a client upon cancellation of a vehicle service contract. The provider refused to make the requested change, citing Occupations Code 1304.1581(b)(1), which states that the provider "shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contact." The provider further referenced Occupations Code 1304.1581(c)(1), regarding contracts held longer than 31 days, which it contends also requires that the amount of claims paid be deducted from a refund to be issued.

The dealership did not agree with the provider's interpretation of the statute and insisted that the contested terms be removed. The provider then contacted the Texas Department of Licensing and Regulation (TDLR). The TDLR did not object to the dealership's interpretation, citing Occupations Code 1304.1581(d), which states that "a provider may allow a service contract holder to cancel a service contract on other terms included in the contact, provided the terms



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do not conflict with this section." The provider disagrees with the TDLR's interpretation and contends that the "other terms" authorized in 1304.1581(d) do conflict with the specific provisions of Occupations Code 1304.1581(b)(1) and 1304.1581(c)(1) concerning how refunds will be calculated.

Given the differing interpretations amongst these parties, I request that the Office of the Attorney General review the Occupations Code and any other applicable statutes to clarify whether a service contract provider has the discretion to not deduct the amount of any paid claims before issuing a refund or if the provider is required to reduce a refund by the amount of claims paid.

Thank you for your attention to this matter, and thank you for your service to the great State of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin P. Eltife". The signature is fluid and cursive, with a large initial "K" and "E".

Kevin P. Eltife, Chair
Senate Committee on Business and Commerce

KPE/pw