

BACKGROUND PAPER FOR THE Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (BEARHFTI)

**(Joint Oversight Hearing, March 5, 2018, Senate Committee on
Business, Professions and Economic Development and the Assembly
Committee on Business and Professions)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BEARHFTI

BRIEF OVERVIEW OF THE “BEARHFTI”

History and Function of BEARHFTI

The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation – BEARHFTI—was established in 2009 with the enactment of ABX4 20 (Strickland, Chapter 18, Statutes of 2009). That bill merged the separate Bureau of Home Furnishings and Thermal Insulation (HFTI) and the Bureau of Electronic and Appliance Repair (EAR) into one regulatory entity. The BEARHFTI was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection [now the Assembly Committee on Business and Professions] (Committees) in 2014.

The original HFTI program was established in early 1911 to deal with flammability issues in the mattress manufacturers industry. Flammability issues were widely recognized during the 1906 San Francisco earthquake and the subsequent fires across the city.

The original EAR program was established in 1963 to address fraudulent and negligent issues in the television repair industry. Prior to the merger of HFTI and EAR, the jurisdiction of both regulatory entities had greatly expanded over time to keep pace with changing technology and industry products.

Today, BEARHFTI (although merged) continues to operate two separate regulatory programs: 1) the HFTI program which is responsible for the oversight and regulation of furniture and bedding manufacturers, importers, wholesalers, retailers, supply dealers, custom upholsterers, thermal insulation manufacturers, bedding sanitizers; and, 2) the EAR program which includes the repair of televisions, microwave ovens, audio and video playback equipment, video cameras, video games, copiers, computer systems, smart phones, tablets/ the repair and installation of auto stereo and alarm equipment, interlock ignition devices and residential satellite/antenna equipment, major home appliances, such as refrigerators, freezers, stoves/ovens, washer, dryers, dishwashers and trash

compactors, and the sale and administration of service contracts for various consumer items sold or used for personal, family or household use.

As a result of SB 19 (Hill, Chapter 421, Statutes of 2017), BEARHFTI is scheduled to assume the licensing and enforcement duties for household movers, which are currently regulated by the Public Utilities Commission (PUC) beginning July 1, 2018.

With the addition of the Household Movers Program, BEARHFTI will oversee three separate regulatory programs under its jurisdictional umbrella. Currently, BEARHFTI licenses/registers businesses, it does not license individuals. The applicable laws for electronic and appliance repair dealers are specified in Business and Professions Code (BPC) § 9800 *et seq.*, home furnishings are specified in BPC § 19000 *et seq.*, and household movers are specified in BPC § 19235 *et seq.* BEARHFTI currently regulates approximately 15 licensure categories throughout both programs. The following list represents BEARHFTI's licensure categories as of December 1, 2017:

- *Appliance Service Dealer*: Repairs, services or maintains major appliances. (2,595 licensees)
- *Combination Service Dealer*: Repairs, services, or maintain electronics and major appliances. (586 licensees)
- *Electronic Service Dealer*: Installs, repairs, services, or maintains electronics. (5,005 licensees)
- *Service Contract Administrator*: Facilitates the compensation of parties for claims or repairs under service contracts and other activities on behalf of service contract sellers. (48 licensees)
- *Service Contract Seller*: Sells service contracts. (12,105 licensees)
- *Bedding Retailer*: Sells bedding products including pillows, mattresses, quilts, comforters, and sleeping bags. (1,960 licensees)
- *Custom Upholsterer*: Repairs, reupholsters, re-covers, renews upholstered furniture, or who makes to order and specification of the user any article of upholstered furniture, using either new materials or the owner's materials. (495 licensees)
- *Furniture/Bedding Retailer*: Sells both upholstered furniture and bedding products. (11,879 licensees)
- *Furniture Retailer*: Sells upholstered furniture. (2,055 licensees)
- *Importer*: Manufactures or wholesales, through employees or agents, any article of upholstered furniture, bedding, or filling material manufactured outside of the United States for purpose of resale in California. (5,006 licensees)
- *Furniture/Bedding Manufacturer*: Manufactures upholstered furniture or bedding in whole, or in part, or who uses new or secondhand materials to upholster any product. (1,540 licensees)

- *Sanitizer*: Sanitizes bedding or filling materials for resale purposes. A licensee, who holds a Manufacturer, Importer, Bedding Retailer, Furniture/Bedding Retailer, or Custom Upholsterer license, does not need a separate Sanitizer license. (12 licensees)
- *Supply Dealer*: Manufactures, processes or sells any felt, batting, pads, woven, or plastic fabrics, or loose material in bags or containers, concealed or not concealed, to be used or that could be used in articles of upholstered furniture or bedding. (122 licensees)
- *Thermal Insulation Manufacturer*: Produces insulation materials or a combination of materials that retards the transfer of heat or cold. (111 licensees)
- *Wholesaler*: Sells any article of upholstered furniture or bedding or filling materials to another for the purpose of resale, but does not include an affiliate or subsidiary where the ownership and name are identical, and that is the exclusive sales outlet of a manufacturer. (198 Licensees)

BEARHFTI's current mission statement, as stated in its 2013-2017 Strategic Plan, is as follows:

To protect and serve the consumers while ensuring a fair and competitive marketplace.

BEARHFTI reported in its *2017 Sunset Review Report* that an updated Strategic Plan would be in place by January 2018; however, BEARHFTI is still in the process of finalizing an updated strategic plan.

BEARHFTI's mandate includes making protection of the public its highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (BPC § 9810.1, 19004.1)

Advisory Council Membership

The BEARHFTI Consumer Advisory Council (Council) is a voluntary body which provides information and guidance related to the industries BEARHFTI oversees. Members of the Council serve in an advisory capacity only and make policy and other related recommendations to the Bureau Chief. According to the BEARHFTI, the purpose of the Council is to:

- Provide perspective and advice on consumer and market issues;
- Research and recommend creative solutions to consumer and industry problems;
- Advise the Bureau Chief on outreach efforts to consumers, the public, licensees, and the industry; and,
- Provide information and comments to the Bureau Chief on a broad range of policy issues including consumer education, industry outreach, and regulatory compliance.

The Council is currently comprised of 12 members, seven professional and five public, and all are appointed by the Director of the DCA. The Council was expanded in October of 2015 from nine to 11,

then again in December of 2017 to 12 members. The Council aims to meet twice a year, at a minimum. Since the Council is not statutorily mandated, there are no quorum requirements. There are currently no vacancies on the Council. The most recent appointments include two representatives of the household movers industry. The following is a listing of the Council members and their backgrounds:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
<p>Pascal Benyamini, Public Member Mr. Benyamini is an attorney and partner at Drinker Biddle & Reath LLP. Since October 2009, Mr. Benyamini has served on the Board of Directors for the California Furniture Manufacturers Association, and since July 2015, he has served on the Board of Directors for the Los Angeles Chapter of the National Tooling and Machining Association. Mr. Benyamini received his Juris Doctorate from the University of California, Davis School of Law, and his Bachelor Degrees, summa cum laude, in Economics and French Studies, from the University of California, Los Angeles.</p>	10/1/2017	10/01/2019	Director of DCA
<p>Sharon Bradley, Professional Member For 13 years, Ms. Bradley has served as the CEO of the North American Home Furnishings Association and the Executive Vice President of the North American Retail Service Corporation, providing leadership, advocacy, and education to owners and managers of home furnishing companies. Ms. Bradley holds a Master of Science in Human Resource Management.</p>	02/1/2006	10/01/2019	Director of DCA
<p>Burt Grimes, Professional Member Mr. Grimes started his company, Pacific West Furniture Manufacturing, in 1979 and continues to successfully grow his business, including acquisition of Royal Mattress Manufacturing in 2010. Mr. Grimes currently serves on the Board of Directors of the California Furniture Manufacturers Association, and has also served as president. Mr. Grimes holds a Bachelor of Science degree in Business Administration from the University of Northern Colorado.</p>	10/1/2005	10/01/2019	Director of DCA
<p>Christopher Higdon, Professional Member Mr. Higdon is President and CEO of California Moving Systems and has served his company and the industry for over 40 years. He is active in the community serving on the boards of the Sacramento State Alumni Association, Northeastern California Better Business Bureau, California Moving and Storage Association, and the American Moving and Storage Association.</p>	12/01/2017	12/01/2019	Director of DCA
<p>Judy Levin, Public Member Ms. Levin has worked in the non-profit arena for 25 years and for the last 7 years has led the Center for Environmental Health, working for corporations, and governmental, health care, and higher educational organizations to move the market towards safer products. Ms. Levin has recently been awarded the 2015 International Interior Design Association Leadership Award of Excellence. Ms. Levin holds a Master of Arts Degree in Social Work from the University of Michigan.</p>	10/01/2015	10/01/2019	Director of DCA
<p>Michael Lipsett, Public Member Dr. Lipsett worked in California state government for nearly 30 years, most recently as Chief of the Environmental Health Investigations Branch in the California Department of Public Health. He played a central role in establishing the state's biomonitoring program, which evaluates toxic chemical exposures in California residents. He received his M.D. degree from the University of California, San Diego.</p>	10/01/2017	10/01/2019	Director of DCA

<p>Dr. Donald Lucas, Public Member Dr. Lucas currently works as a Combustion Scientist at the Lawrence Berkeley National Laboratory and the University of California, Berkeley. His research focuses on combustion byproducts and has led to the development of diagnostic methods for the measuring of toxic combustion. Dr. Lucas holds a Ph.D. in Physical Chemistry from the University of California, Berkeley.</p>	10/01/2015	10/01/2019	Director of DCA
<p>Antoinette Stein, Public Member Dr. Stein currently works with for the non-profit Environmental Health Trust. Dr. Stein brings 7 years' work experience at General Electric Company (GE) where she worked in research and development of materials and processes including radiant barrier and low emissivity coating technology for GE Medical Systems and GE Aircraft Engines. She also brings 8 years work experience for the State of California working in the Department of Public Health in the Environmental Health Laboratory Branch and the Department of General Services Procurement Division in the Environmentally Preferable Purchasing Unit. Dr. Stein holds a Ph.D. in Environmental Engineering from University of Cincinnati.</p>	10/01/2017	10/01/2019	Director of DCA
<p>Stephen McDaniel, Professional Member Mr. McDaniel serves as the Assistant Executive Director and Assistant General Counsel to the Service Contract Industry Council ("SCIC"), a national trade association representing the interests of the service contract industry. Mr. McDaniel oversees SCIC's efforts to enact and monitor legislative, regulatory and administrative activity throughout the United States. Mr. McDaniel focuses his practice on the areas of service contract, warranty, motor vehicle ancillary product, health care, and insurance industries.</p>	10/01/2017	10/01/2019	Director of DCA
<p>Brandon Wilson, Professional Member Mr. Wilson currently serves as the Chief Compliance Officer for MALOUF®, and has served in various compliance, training, product development, enforcement, and safety roles since 1993. Mr. Wilson holds Bachelors of Science in English from Utah State University.</p>	10/01/2017	10/01/2019	Director of DCA
<p>Stephen Weitekamp, Professional Member Mr. Weitekamp has been involved with the moving and storage industry since 1980. He has held several leadership positions and has served as President of the California Moving and Storage Association (CMSA) since 2006. He is also engaged with national and international moving and storage issues and serves as a member of the board of directors for the American Moving and Storage Association (AMSA).</p>	12/01/2017	12/01/2019	Director of DCA
<p>Dr. David Yarbrough, Professional Member Dr. Yarbrough has been active in the field of thermal insulation for over 35 years and is the author of over 150 technical documents on the subject. Dr. Yarbrough is the founder of R&D, Inc. Dr. Yarbrough holds a Ph.D. in Chemical Engineering from the Georgia Institute of Technology, and is a registered engineer in two states.</p>	10/01/2015	10/01/2019	Director of DCA

Fiscal, Fund and Fee Analysis

BEARHFTI is a special fund agency whose activities are funded through regulatory and license fees. BEARHFTI does not receive support from the General Fund. As a result of the merger of the HFTI and the EAR programs, BEARHFTI currently oversees two separate funds: HFTI Fund and EAR Fund. With the addition of the Household Movers Program, BEARHFTI will separately administer the Household Movers Fund as well. These funds are discussed further in Issue #3 below.

All licenses under the EAR program are renewed annually, and all licenses under the HFTI program are renewed biennially, with the exception of the Thermal Insulation Manufacturer's license which is renewed annually. All licenses expire on the last day of the month of expiration.

FEE SCHEDULE AND REVENUE - HFTI Program								(List revenue in thousands)
Initial License Fees	Current Fee	Statutory Limit	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	FY 2016/17 Revenue	% of Total Revenue	
Retail Bedding Dealer	\$140	\$150	\$46	\$17	\$23	\$12	<1%	
Retail Furniture Dealer	\$140	\$150	\$13	\$20	\$16	\$57	1%	
Retail Furniture/ Bedding Dealer	\$280	\$300	\$242	\$284	\$122	\$247	5%	
Custom Upholsterer	\$420	\$450	\$10	\$10	\$18	\$11	<1%	
Sanitizer's License	\$420	\$450	\$1	\$1	\$1	\$1	<1%	
Supply Dealer's License	\$625	\$675	\$2	\$3	\$5	\$3	<1%	
Wholesale Furniture/Bedding Dealer	\$625	\$675	\$10	\$10	\$18	\$31	1%	
Furniture/Bedding Manufacturer	\$750	\$940	\$78	\$90	\$108	\$197	4%	
Importer's License	\$750	\$940	\$477	\$514	\$567	\$546	11%	
Thermal Insulation Manufacturer	\$2,000	\$2,500	\$14	\$14	\$6	\$14	<1%	

Note: This table was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report

FEE SCHEDULE AND REVENUE - EAR Program								(List revenue in thousands)
Initial Registration Fees	Current Fee	Statutory Limit	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	FY 2016/17 Revenue	% of Total Revenue	
Service Contract Seller	\$95	\$95	\$125	\$146	\$166	\$148	5%	
Service Contract Administrator	\$95	\$95	\$16	\$1	\$1	\$1	<1%	
Electronic Service Dealer	\$190	\$205	\$154	\$132	\$129	\$136	5%	
Appliance Service Dealer	\$190	\$205	\$41	\$52	\$57	\$51	2%	
Combination Electronic/Appliance Service Dealer	\$375	\$405	\$10	\$4	\$38	\$18	1%	

Note: This table was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report

BEARHFTI reports that at the conclusion of Fiscal Year (FY) 2016/17, the HFTI's reserve was approximately \$3.1 million (7.0 months) and the EAR's reserve was approximately \$2.8 million (11.9 months). While neither fund under BEARHFTI is required to maintain a specified reserve level, the DCA typically recommends that entities maintain a 3-6 month reserve in order to provide for a reasonable contingency fund to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs. BEARHFTI is subject to BPC §128.5 which specifies that at the end of any FY, any agency within the DCA that has unencumbered funds in amount that is more than the agency's operating budget for the next two FYs is required to reduce fees.

As reported by BEARHFTI the total revenues anticipated for the HFTI fund for FY 2017/18 is \$8.095 million and for the EAR fund is \$5.828 million. The total estimated expenditures for FY 2017/18 are \$4.984 million for the HFTI program and \$2.701 million for the EAR program.

BEARHFTI raised fees for all of its licensees (except the Thermal Insulation Manufacturer's license) - HFTI licenses in September 2016 and EAR licenses in January 2017. Licensing fees are capped in statute and additionally specified in regulations. Licenses under the EAR program are renewed annually and licenses under the HFTI program are renewed biennially.

Through the HFTI fund, BEARHFTI provided a loan to the GF in FY 2011/12. The loan was repaid in FY 2013/14 with interest.

FUND CONDITION - HFTI						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	CY 2017/18*
Beginning Balance	\$2,271	\$1,847	\$3,287	\$2,606	\$3,022	\$3,054
Revenues and Transfers	\$3,879	\$4,390	\$4,103	\$4,711	\$4,768	\$5,041
Total Revenue	\$6,150	\$7,737	\$7,390	\$7,317	\$7,790	\$8,095
Budget Authority	\$4,648	\$4,858	\$5,024	\$5,014	\$4,866	\$4,828
Expenditures	\$4,340	\$4,454	\$4,855	\$4,433	\$4,354	\$4,984
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$16	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$1,500	\$0	\$0	\$0	\$0
Fund Balance	\$1,781	\$3,261	\$2,530	\$2,876	\$3,054	\$2,837
Months in Reserve	4.8	8.1	6.8	7.3	7.0	6.6

* Projected

Note: This table was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report and subsequently updated on February 26, 2018.

FUND CONDITION - EAR						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	CY 2017/18*
Beginning Balance	\$1,935	\$2,182	\$2,378	\$2,056	\$2,447	\$2,848
Revenues and Transfers	\$2,373	\$2,564	\$2,199	\$2,554	\$2,736	\$2,980
Total Revenue	\$4,308	\$4,746	\$4,577	\$4,610	\$5,183	\$5,828
Budget Authority	\$2,412	\$2,677	\$2,841	\$2,875	\$2,945	\$2,613
Expenditures	\$2,141	\$2,370	\$2,541	\$2,170	\$2,104	\$2,701
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Fund Balance	\$2,151	\$2,365	\$2,034	\$2,436	\$2,848	\$2,962
Months in Reserve	10.8	11.2	11.2	12.5	11.9	12.4

* Projected

Note: This table was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report and subsequently updated on February 26, 2018.

For the last four FYs, the HFTI program has expended approximately 28% on enforcement, 8% on licensing, 43% on administration, and 21% on DCA pro rata. The EAR program has expended approximately 34% on enforcement, 16% on licensing, 11% on administration, and 39% on DCA pro rata.

Cost Recovery

According to BEARHFTI, cost recovery is rarely ordered in administrative cases, as the disposition of a case is typically a revocation. However for those cases where cost recovery is ordered (such as a stayed revocation with a suspension); cost recovery is often a term of probation. BEARHFTI utilizes the Franchise Tax Board's (FTB) intercept program for licensees if the business is a sole proprietor or a partnership model (those typically have social security number or other tax payer identification numbers associated with them). As noted, because many citations are issued for unlicensed activity-where no identifying number exists-cost recovery through the FTB is not always successful. BEARHFTI does not have the authority to seek cost recovery through statement of issue filings.

BEARHFTI does not have the authority to order restitution for the consumer, and instead recommends settlements of refunds, reworks, and adjustments to transactions. BEARHFTI notes that since FY 2013/14, approximately \$1 million has been returned to consumers via refund, rework, or adjustment as a result of filed consumer complaints.

Staffing

BEARHFTI has approximately 48 authorized staff positions (19 under the EAR program and 28.9 under the HFTI program) with multiple vacancies in the licensing, investigations and administrative units. BEARHFTI has requested a staff increase through the Budget Change Proposal process as a result of the addition of the Household Movers Program effective July 1, 2018. Bureau staffing is discussed further in Issue #4 below.

Licensing

Current licensees are not required to meet education or examination standards, but applicants for licensure are requested to provide information about past criminal history. Licensees under the Household Movers Program will be required to pass an examination and as a result, the BEARHFTI will administer examinations for that division beginning July 1, 2018. For all other programs, applicants sign under penalty of perjury that the information provided in the application is true and correct. Applicants who report past disciplinary information are required to provide additional documentation to BEARHFTI in order to determine if the past criminal activity is substantially related to the functions of the license being applied for. Additionally, BEARHFTI searches internal records for any criminal or administrative cases, citations, consumer complaints, or other actions previously related to an applicant.

BEARHFTI does not have statutory authority to request current or prospective licensees to comply with fingerprint requirements. However, beginning July 1, 2018, it will have the authority to require fingerprints only for those current and prospective licensees within the Household Movers Program.

BEARHFTI has established an internal timeframe to process all applications within 30 days. BEARHFTI reports that it has met its internal timeframes by processing applications within 5-16 days during the last FY.

Enforcement

BEARHFTI’s established performance target for its investigation process is 180 days or less. According to BEARHFTI, cases are prioritized based on the level of consumer harm and business practices. Average completion times range between 90 to 100 days, with most cases being completed within a 60-day period. BEARHFTI notes that out-of-country cases may take longer to settle.

BEARHFTI reports that it has changed its enforcement process since the prior sunset review. Prior to 2016/17, BEARHFTI utilized field staff to conduct onsite inspections throughout the state. Now, in addition to field staff, in-house staff reviews business websites and advertisements to identify potential violations. BEARHFTI reports that this shift has helped to improve daily operations, efficiency, and response times. Cases identified as a high priority are referred to field staff, while routine complaints are handled in-house. Field inspectors continue to conduct routine inspections for unlicensed activity and address issues that cannot be handled through the in-house Compliance Unit. Currently, BEARHFTI does not have a standard number of businesses that it investigates to determine whether they are in compliance with the law. BEARHFTI noted that many of its complaints are related to invoicing or estimate documentation issues, service contract issues, and manufacturer’s warranties and can often be addressed without field investigative work. Although BEARHFTI receives many complaints regarding manufacturer’s warranty issues, it does not have jurisdiction over such warranties.

BEARHFTI reports that the overall number of complaints received has increased since the prior sunset review, but complaints referred to field investigation have decreased because many issues are now addressed through its in-house complaint process. In addition, BEARHFTI reports that in FY 2014/15 it implemented the \$0 citation program, which provides violators with 30 days to correct a violation before a monetary citation or fine is issued. BEARHFTI reports that this process is working well because it allows BEARHFTI to provide outreach and education to businesses in an effort to achieve compliance; however, any subsequent violations result in monetary penalties as permitted under existing law.

ENFORCEMENT STATISTICS			
	<u>FY 2014/15</u>	<u>FY 2015/16</u>	<u>FY 2016/17</u>
Complaints Received	2725	2665	2054
Closed	1035	1523	1062
Referred to Investigation	1656	1171	976
Average Time to Close	5	6	2
Pending (close of FY)	45	13	29
Source of Complaint			
Public	1049	989	821
Licensee/Professional Groups	2	1	1
Governmental Agencies	11	20	6
Other	1676	1676	1233
Conviction / Arrest			
CONV Received	2	0	0
CONV Closed	2	0	0

Average Time to Close	1	0	0
CONV Pending (close of FY)	0	0	0
LICENSE DENIAL			
License Applications Denied	7	8	5
SOIs Filed	4	2	4
SOIs Withdrawn	3	0	0
SOIs Dismissed	0	0	0
SOIs Declined	1	0	1
Average Days SOI	451	0	449
ACCUSATION			
Accusations Filed	1	0	0
Accusations Withdrawn	0	0	1
Accusations Dismissed	0	0	0
Accusations Declined	0	0	0
Average Days Accusations	330	0	540
Pending (close of FY)	0	1	0
CITATION AND FINE			
<u>Citations Issued</u>	<u>1495</u>	<u>1523</u>	<u>1134</u>
<u>Average Days to Complete</u>	<u>5</u>	<u>5</u>	<u>4</u>
<u>Amount of Fines Assessed</u>	<u>\$78,500</u>	<u>\$87,500</u>	<u>\$380,415</u>
<u>Reduced, Withdrawn, Dismissed</u>	<u>\$34,250</u>	<u>\$28,150</u>	<u>\$98,700</u>
<u>Amount Collected</u>	<u>\$26,000</u>	<u>\$22,850</u>	<u>\$165,165</u>
CRIMINAL ACTION			
Referred for Criminal Prosecution	<u>0</u>	<u>0</u>	<u>0</u>
Inspections conducted	<u>4,681</u>	<u>5,202</u>	<u>4,185</u>

Note: This table was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report, with clarifying information provided by BEARHFTI.

The table below shows the timeframes for the last three years for investigations and formal discipline.

Enforcement Timeframes	FY 2014/15	FY 2015/16	FY 2016/17
Investigations: Average days to close	57	119	67
Discipline: Average Days to Complete	607	739	219

Note: This information was taken from the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report

The table below identifies the actual formal disciplinary actions for the past three years.

Formal Disciplinary Actions	FY 2014/15	FY 2015/16	FY 2016/17
Accusations Filed	1	0	0
Revocation	1	1	1
Voluntary Surrender	0	0	0
Suspension	0	0	0
Probation with Suspension	0	0	0
Probation	1	2	1
Probationary License Issued	0	0	0

Note: This information was taken from the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report

The fine schedule for violations of EAR laws are specified under Title 16, California Code of Regulations (CCR) § 2771, and the fines for service contract violations are specified in BPC §9855.8. Fines are levied depending on the severity of the violation, repeat violations, and can range anywhere between \$100 and \$2000.

The fine schedule for violations of the HFTI laws are specified under 4 CCR § 1383.2 and BPC §19094. Fines are levied depending on the violation of each licensure category. For example, a violation of labeling requirements can result in a fine between \$100 and \$1000. The highest fines levied under HFTI can be up to \$2500 and are predominately assessed for violations of the flammability regulations. BEARHFTI has not increased its fine amounts since the previous sunset review and reports that it deems the current fine schedule is appropriate for the types of violations that occur. The average fine under the EAR program is \$250 and \$500 under the HFTI program. As reported by BEARHFTI, the five most common reasons for issuing citations are:

- Unlicensed activity;
- Failure to meet flammability standards;
- Chemical statement notification violations;
- Labeling violations; and,
- Invoice and estimate violations

In the DCA's annual report to the Legislature, it was reported that BEARHFTI assessed \$383,916 in fines, reduced \$75,050, and collected \$173,865.

Unlicensed activity continues to be an issue for a number of industries regulated by BEARHFTI. It is unknown which licensing group has highest numbers of unlicensed activity; however, BEARHFTI reports that it receives the most complaints about, and issues the most citations to those engaged in unlicensed electronic and appliance repair practices.

BEARHFTI notes that about 20 percent of businesses do not meet current licensure requirements. To address the unlicensed industry, BEARHFTI utilizes both field inspectors and internal investigations. Internal staffs use the internet to check for businesses offering licensed services and field inspectors conduct routine inspections of businesses providing licensed services. Additionally, BEARHFTI works with industry associations and relies on tips from licensees to combat unlicensed activity. Enforcement efforts and unlicensed activity are discussed further in Issue #9 below.

Laboratory/Product Testing

California is one of two states in the nation that conducts laboratory testing and establishes classifications for filling materials contained in furniture and bedding products. Laboratory testing is conducted for products under the HFTI program. The rest of the country has looked to California for technical expertise in determining the industry standards. California's licensees in these industries typically produce products that meet California's high standards and distribute those products to the rest of the nation. BEARHFTI has access to, and may inspect and test, any article of upholstered furniture, bedding, or insulation, and may condemn, seize, or destroy any of those products that are in violation of the law. While companies do not need to have their products tested to receive a license, staff may randomly select items for testing to determine if products are in compliance. BPC § 19200.5 authorizes BEARHFTI to open and inspect any article of upholstered furniture or bedding, including pillows or cushions for inspection purposes to ensure the materials comply with California's product

standards. Under current law, the BEARHFTI is required to reimburse the manufacturer, distributor, or retailer for the actual cost of any article or sample of filling material or insulation taken for testing. However, if the product fails the test, then BEARHFTI is not required to provide reimbursement. BEARHFTI has averaged approximately \$10,000 in reimbursement costs for product sampling annually during the last four FYs.

Between 2013 and 2017, BEARHFTI tested an annual average of approximately 350 samples of upholstered furniture products (adult and juvenile), mattresses (crib and twin, etc.), bedding products (pillows, mattress pads, plumage products, among others), and thermal insulation products (i.e. boards, battings, reflective barriers, etc.). Upholstered furniture and mattresses make up the largest share of those samples.

In 2018, BEARHFTI is projected to sample approximately 390 samples, including 330 upholstered furniture samples and approximately 60 insulation samples. These samples do not include those products which are tested by the Department of Toxics and Substance Control (DTSC), as part of SB 1019 (Leno, Chapter 862, Statutes of 2014) labeling compliance for flame retardant chemicals.

Flammability Standards and the Implementation of SB 1019

At the time of the BEARHFTI's last sunset review, SB 1019 was simultaneously being considered by the Legislature. That bill required the manufacturers of upholstered furniture to include a label indicating whether or not the product has added flame retardant chemicals, and provided BEARHFTI with enforcement authority to ensure compliance. As a result of this law, BEARHFTI in conjunction with the DTSC coordinate those products to be tested for compliance with California's flame retardant labeling standards. BPC § 19094 requires BEARHFTI to provide the DTSC with a sampling of products to be tested to determine if the label accurately states whether or not there are flame retardant chemicals in a particular product. BEARHFTI is responsible for annually determining the number of products to be tested based on the financial resources available. BEARHFTI is responsible for paying the costs for product testing and since 2015 it has reimbursed DTSC between \$10,000 and \$15,000 annually for compliance testing costs.

(For more detailed information regarding the responsibilities, operation and functions of BEARHFTI, please refer to its 2017 Sunset Review Report. This report is available on its website: http://www.bearhfti.ca.gov/forms_pubs/sunset_2017.pdf)

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

BEARHFTI was last reviewed by the Legislature through sunset review in 2013-14. During the previous sunset review, 13 issues were raised. In December 2017, BEARHFTI submitted its required sunset report to the Committees. In this report, BEARHFTI described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under "Current Sunset Review Issues."

- **Revenues were increased with the passage of AB 1175 (Ridley-Thomas, Chapter 187, Statutes of 2015).**
- **Standards were adjusted.** The Committees directed BEARHFTI to reexamine its standards, especially its feather and down and labeling standards, to determine if 1) some of those standards should be relaxed so that manufacturers can meet them more easily, presuming there is no appreciable impact on consumer safety; 2) standards should be clarified or better advertised; or 3) its penalties for home furnishings and thermal insulation violations, which average \$500, are too low to act as a proper deterrent.

In January 2015, the TB 117-2013 standard was implemented replacing TB 117. The Bureau anticipated that the failure rate, based on the new standard, would range between 5-10 percent. The current failure rate for TB 117-2013 samples is 6.8%; therefore actual compliance rate is within the previously estimated parameters.

The Bureau reports that it is currently evaluating adopting the sliding scale maximums for damaged feathers for blended waterfowl feather and down products which will provide more realistic and obtainable results for the plumage industry and which BEARHFTI does not believe will cause economic or health and safety hazards to the consumer.

The Bureau reports that it is also evaluating amending regulations to reflect a more stringent oxygen number not exceeding 10 grams of oxygen per 100,000 grams of sample. The update will reflect what is accepted internationally and considering the upmost cleanliness for the consumer as 10 grams of oxygen per 100,000 grams per sample is a cleaner plumage product.

BEARHFTI held a workshop in February 2017 regarding proposed regulatory amendments to product labeling requirements. Some of the items discussed during the workshop were antiquated requirements; propose new law label examples, adding definitions, and clean-up of obsolete passages. The Bureau plans to submit a regulatory proposal to amend current labeling requirements in the summer of 2018.

- **BEARHFTI complied with the requirement to provide a report to the Legislature.** During BEARHFTI's last sunset review, the Committees identified a number of questions related to the current regulatory oversight and structure of BEARHFTI including whether BEARHFTI should switch to biennial license renewals for all licenses; whether BEARHFTI should deregulate or streamline market segments, whether BEARHFTI should continue to offer certain home furnishings licenses; whether the BEARHFTI should consolidate license types that are highly similar or are infrequently used; whether BEARHFTI should deregulate, consolidate, or issue stand-alone licenses to sanitizers and custom upholsterers with another license type.

AB 2740 (Bonilla, Chapter 428, Statutes of 2014) required the above mentioned issues to be addressed in a report submitted to the Legislature by July 1, 2015. In order to answer the questions raised by the Committees, BEARHFTI contracted with CPS HR Consulting to perform a market condition assessment on the specific issues identified. CPS HR Consulting conducted interviews and/or surveys with BEARHFTI management, Advisory Council members, industry officials, and a representative sample of California consumers to gather information for the assessment. This report examined all of the above questions. BEARHFTI

submitted its findings in the supplemental report, *Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation 2014 Sunset Review*. As a result of the findings from the report, BEARHFTI has raised two new issues in its *2017 Sunset Review Report* including licensure renewal and combining licensure categories which are discussed in more detail below.

- **BEARHFTI has a new Bureau Chief.**

BEARHFTI's current Bureau Chief, Nicholas Oliver, was appointed by the Governor in October of 2017.

- **BEARHFTI updated its website in April 2016.**

BEARHFTI updated its website as part of its *2016 Outreach Plan* which was developed in response to the issues identified in the *2015 Market Condition Assessment Final Report*. As part of the outreach plan, BEARHFTI updated its website to remove duplicative pages and content, bring increased visibility for accessing important consumer information and publications including enforcement related data, and create a more user-friendly site.

CURRENT SUNSET REVIEW ISSUES FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION

The following are unresolved issues pertaining to BEARHFTI or areas of concern that should be considered, along with background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas BEARHFTI needs to address. BEARHFTI and other interested parties have been provided with this Background Paper and BEARHFTI will respond to the issues presented and the recommendations of staff.

BEARHFTI ADMINISTRATION ISSUES

ISSUE #1: (BreEZe) BEARHFTI continues to use outdated information technology systems and other standalone programs in lieu of BreEZe. What is BEARHFTI's technology future? Have information technology needs changed with the addition of the Household Movers Program?

Background: DCA has been working since 2009 on replacing multiple antiquated standalone IT systems with one fully integrated system. In September 2011, DCA awarded Accenture LLC with a contract to develop and implement a commercial off-the-shelf IT system, commonly referred to as BreEZe. BreEZe was intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, apply for renewals, and pay the necessary fees through the Internet. The public can also file complaints, access complaint status, and check licensee information.

The project plan called for BreEZe to be implemented in three releases. The first release was scheduled for July 2012. BEARHFTI was originally scheduled for inclusion in Release 3 of the project. Under Special Project Report 3.1, which outlined the changing scope and cost of the BreEZe project, Release 3 was removed from the project entirely in 2015.

DCA currently has no formal plan to expand BreEZe to the 19 boards originally included in Release 3. Instead, DCA first intends to conduct a cost-benefit analysis for Release 3 boards and then make a decision about whether programs previously slated for Release 3 of the project will come onto BreEZe and, if so, how that will be implemented. It is not clear whether the system has been evaluated to meet the needs of Release 3 entities like BEARHFTI, many of which are facing significant operational challenges due to their lack of dynamic IT capacity.

According to BEARHFTI, in August 2017, staff met with DCA's Chief Information Officer and Executive Office and agreed on a phased-in approach beginning with an inventory and documentation of existing licensing and enforcement business processes. Outputs from this analysis will serve as key inputs to the Project Approval Lifecycle process. BEARHFTI advises that it will work with DCA and the California Department of Technology to evaluate all alternatives prior to selecting the best technology response, a strategy the BEARHFTI states is consistent with DCA's Strategic Plan for all Release 3 boards and bureaus. Although no "bridge system" is being utilized, several workarounds are currently being used to satisfy program requirements or needs that cannot be met by current legacy systems.

BEARHFTI reports in the two tables below (Table 1 and Table 2) the amount that it has expended on the BreEZe program.

BreEZe Costs (Table 1)				
FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18*
\$147,434	\$75,378	\$72,778	\$179,692	\$147,000 (projected)

Note: This table was taken from page 19 of the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation's 2017 Sunset Review Report

During the 2014 sunset review, Committee staff raised the issue of BreEZe. At that time, Committee Staff recommended BEARHFTI update the Committees about the current status of its implementation of BreEZe including expecting start dates, new functionalities, additional costs, and any existing or expected declines in serve levels and licensing and enforcement backlogs. AB 2740 required BEARHFTI to report back to the Committees on the status of its implementation of BreEZe, including whether the system will accommodate its current and future needs. In BEARHFTI's 2015 Report to the Legislature, it provided the following concerning BreEZe.

“At present, the Department continues to support the Bureau’s legacy systems as the Bureau’s transition to BreEZe in Release 3 is not currently scheduled. The Department will conduct a formal cost-benefit analysis of BreEZe, in conformance with the State Auditor’s Report, prior to moving forward with Release 3. Unless the cost-benefit analysis indicates otherwise, the goal remains to have a single integrated licensing and enforcement system. The Department and Bureau are awaiting the outcome of that analysis prior to planning the Bureau’s transition to BreEZe. The Bureau has paid a share of the initial hardware and software investment costs, and will continue to contribute to the remaining non-Accenture project costs, but will not pay Accenture project costs for Release 1 and 2. BreEZe project costs are allocated among the boards and bureaus based upon their respective share of the Department’s overall annual initial licensing application and license renewal transactions.”

BEARHFTI included Table2 in its 2015 Report to the Legislature which specified the BreEZe cost breakdown for each of the programs (EAR) and (HFTI).

BreEZe Costs (Table 2)						
	Total Costs	% of Total Budget	EAR Costs	% of Total Fund Budget	HFTI Costs	% of Total Fund Budget
FY 2013-14	\$147,434	2.15%	\$60,955	2.56%	\$86,479	1.93%
FY 2014-15	\$75,378	0.94%	\$29,305	1.02%	\$46,073	0.90%
FY 2015-16	\$208,307	2.69%	\$82,397	2.92%	\$125,910	2.55%
FY 2016-17	\$183,677	2.33%	\$72,560	2.54%	\$111,117	2.22%

Note: The information for this table was taken from page 25 of the Response to Issues and Recommendations Pursuant to the BEARHFTI's 2014 Sunset Review [Section 12, Attachment C.1]

With the exception of FYs 2013/14 and 2014/15, the reported BreEZe costs provided by BEARHFTI are inconsistent, making it difficult to determine the actual costs associated with the IT project and any continued support for the program.

Staff Recommendation: *BEARHFTI should update the Committee about the current status of its IT program. How will the addition of the Household Movers Program impact BEARHFTI's current technology needs? Also, BEARHFTI should explain why its projected 2017/18 costs for BreZe are expected to be higher than 2014/15 and 2015/16 and why BEARHFTI paid a higher cost in FY 2016/17 given that it will never utilize the system and to date, does not have a new IT plan in place? Also, BEARHFTI should try to provide the accurate costs for FYs 2015/16 and 2016/17.*

ISSUE #2: (DCA PRO RATA). What services does the EAR program receive from the DCA that would lead to a 50% higher Pro Rata expenditure than the HFTI program?

Background: DCA's utilization of pro rata continues to be an ongoing issue for the Legislature and the Committees. BPC § 201 authorizes the Director of the DCA, with the approval of the Department of Finance, to charge boards and bureaus for estimated administrative expenses, commonly referred to as Pro Rata. Currently, all DCA entities are subject to pay "pro rata" in order for the DCA to provide centralized administrative services to all of its boards, committees, commission and bureaus, including BEARHFTI. Pro rata shares fund numerous DCA-wide services including call center services, complaint resolution, and correspondence units. Since all boards, bureaus, commissions and committees under the jurisdiction of the DCA are self-funded programs, meaning funds are paid solely by the fees collected from licensees, the issue of pro rata and the administrative charges to DCA programs has long been a subject of scrutiny to ensure that each entity is charged the fair and reasonable amount for services rendered by the DCA. As such, pro rata expenditures are often examined as a part of the sunset review process.

In 2014, BEARHFTI reported that the EAR program spent approximately 37% of its budget on pro rata and the HFTI program spent approximately 19% of its budget on pro rata expenses. The issue of pro rata was raised during BEARHFTI's 2014 sunset review. During the prior sunset review, the Committees recommended that BEARHFTI discuss whether "it could achieve cost savings by dealing with more of its consumer complaints in-house through its cite and fine authority". At that time, the Committee staff background paper recommended that BEARHFTI advise the Committees on how pro rata calculations were determined, including an analysis of services received from the DCA. This information request was ultimately included in AB 2740 (Bonilla, Chapter 428, Statutes of 2014) which required the BEARHFTI to report to the Legislature on a number of issues in 2015.

In response to the Committee's request, BEARHFTI noted that in July of 2016, an interagency agreement was entered into with the DCA, which transferred three Consumer Service Representative positions from the Department's Complaint Resolution Program (which is no longer operational) to BEARHFTI. In July 2017, BEARHFTI's authorized positions were increased through a budget change proposal, which added one Consumer Service Representative position to HFTI's budget and two Consumer Service Representative positions to EAR's budget. Those positions provided BEARHFTI with in-house complaint service capabilities and are reported to reduce the pro rata costs paid to the [DCA]. The Consumer Service Representative positions have since been reclassified to the Staff Services Analyst classification and redirected to BEARHFTI's Enforcement Unit to combine duties and maximize resources. The Bureau reported a cost savings of \$291,000 in FY 2016-17 resulting from the interagency agreement.

However, BEARHFTI reported in its *2017 Sunset Review Report* that the HFTI program was charged 21% of its budget for pro rata and the EAR program was charged 41% (both increases from the

previous year reported by BEARHFTI). BEARHFTI stated that it anticipated a reduction in pro rata of \$277,000 in FY 2017/18 and on-going.

The FY 2017/18 projected costs for both EAR and HFTI’s pro rata costs were not included in BEARHFTI’s 2017 Sunset Review Report, but in the DCA’s annual pro rata report to the Legislature, it is projected that the EAR program will spend 22% (a decrease) of its budget on pro rata, while the HFTI program will spend 20% (an increase) of its budget on pro rata costs.

The pro rata expenditures reported by BEARHFTI and in the DCA’s annual pro rata report to the Legislature are inconsistent. As a result, it is difficult to identify the true expenditure figures for BEARHFTI’s pro rata shares are. In addition, it is unclear how the addition of the household movers will impact pro rata expenses.

<u>DCA Reported Figures</u>		<u>BEARHFTI Reported Figures</u>	
2015/16	2016/17	2015/16	2016/17
EAR: 37%	EAR: 34%	EAR: 35%	EAR: 41%
HFTI: 20%	HFTI: 18%	HFTI: 19%	HFTI: 21%

Staff Recommendation: *BEARHFTI should advise the Committees on the process for calculating pro rata expenditures for both the EAR and the HFTI programs. In addition, BEARHFTI should advise the Committees on the services it anticipates utilizing from the DCA for the home movers program and what the anticipated pro rata costs are expected to be given that the transition will include assistance from the CPUC. Further, BEARHFTI should explain to the Committees whether or not the projected reductions for FY 2016/17 were ever realized and if the same expenditures are expected for 2018.*

ISSUE #3: (FUND ADMINISTRATION) BEARHFTI administers two separate funds (EAR and HFTI). How does the Bureau effectively manage this effort? What steps is BEARHFTI taking to prepare for the administration of a third practice act and fund?

Background: Similar to a multitude of other boards and bureaus within the DCA, the BEARHFTI is comprised of two, once separate, regulatory entities. As a result, when the EAR and the HFTI collapsed their separate structures into one, BEARHFTI was tasked with overseeing two separate funds and two regulatory programs (the EAR program and the HFTI program). Currently, BEARHFTI treats both programs separately with respect to funding and program administration. Clearly, there are areas where services may overlap including enforcement, licensing, and administration such as rent, supplies, and executive staff, among others. With this addition of household movers, BEARHFTI will be responsible for three separate regulatory programs and three separate funds.

Merging the funds and or practice acts of numerous DCA regulated entities has been trending during past sunset oversight. In 2011, SB 933 (Runner, Chapter 449, Statutes of 2011) combined the acts applicable to speech -language pathologists, audiologists, and hearing aid dispensers and combined the funds from each of the previous regulatory entities to reflect regulation by one board. AB 180 (Bonilla, Chapter 395, Statutes of 2015), combined the acts applicable to the cemetery and funeral acts and merged the funds from each of the previous regulated entities under the Cemetery and Funeral Bureau's jurisdiction. AB 179 (Bonilla, Chapter 510, Statutes of 2015) combined the funds of the

vocational nurses and the psychiatric technicians under the Board of Vocational Nursing and Psychiatric Technicians. AB 177, (Bonilla Chapter 428, Statutes of 2015), consolidated the separate funds of the Board of Professional Land Surveyors, Engineers, and Geologists.

Given the BEARHFTI's licensee landscape, merging practice acts or funds may or may not be beneficial, however, BEARHFTI should advise the Committees and stakeholders on its administrative efforts to ensure appropriate accounting figures for so many different funds.

Staff Recommendation: *The BEARHFTI should advise the Committees on its processes and procedures to ensure administrative and other charges are correctly attributed to the correct fund. In addition, the BEARHFTI should advise the Committees on its accounting methods for separate administrative services between the two programs, including its plans to for the administration of the Household Movers Fund.*

ISSUE #4: (STAFFING). How is BEARHFTI addressing staffing shortages, especially in the field representative classification?

Background: BEARHFTI reported in its *2017 Sunset Review Report*, that the “overall vacancy rate has now risen to 15 percent compared to nine percent in FY 2013-14 primarily due to field staff transferring to other positions and the retirement of senior field staff”.

Further, BEARHFTI reports challenges with field staff recruitment because those positions are specialized and require candidates to meet minimal educational or experience requirements related to BEARHFTI's specific industries. Even with administering a continuous examination to broaden its candidate pool for the Field Representative and Inspector classifications, BEARHFTI reported that it has seen minimal interest from qualified applicants. Further exacerbating this issue is that candidates must come from specific regions or territory of which the inspector is needed. As of December 2017, BEARHFTI noted that it was actively recruiting for positions and is working with the DCA to help address the personnel shortage. Currently, BEARHFTI considered a 24-month pilot program to use an alternate classification to provide a wider range of eligible candidates, centralize core functions and allow for cross over between the EAR and HFTI programs, rather than limiting the duties to one program or the other.

Staff Recommendation: *BEARHFTI should advise the Committees on any additional recruitment or staffing issues and, further should advise the Committees on any success it has had in increasing field inspector staff and what, if any, other changes are necessary.*

ISSUE #5: (OUTREACH). How is the public made aware of BEARHFTI's consumer protection efforts? What improvements should be made to ensure consumers, the public and regulated entities know about BEARHFTI's actions?

Background: BEARHFTI helps to maintain consumer protection by ensuring that consumers receive the appropriate repair services for which they are paying for, set industry standards for the safety of manufactured upholstered products, and ensures that the public is protected from unscrupulous sales, service contracts, and repair practices. According to BEARHFTI's *2013-2017 Strategic Plan*, BEARHFTI licenses and regulates almost 40,000 companies across the globe from small single-person

businesses to major corporations. The staff license/register companies, inspect businesses, ensure compliance with laws and regulations, conduct investigations, test products to ascertain if they meet the required standards, conduct research and development, educate applicants and registrants, and initiate disciplinary action against companies who commit egregious violations- and beginning July 1, 2018, BEARHFTI will expand to include the regulation of the household moving industry.

In the *Market Condition Assessment Final Report*, it was widely reported that BEARHFTI needed to provide stronger outreach to enhance visibility, communication, and information regarding its regulatory programs. Consumer feedback presented in that same report also noted that BEARHFTI had to cancel advisory committee meetings, thereby losing important industry stakeholder participation. Further, industry feedback noted that BEARHFTI needed to improve outreach and industry/consumer education. As the licensure program for household movers transitions to BEARHFTI, outreach and consumer awareness efforts will be critical.

To address concerns of low consumer awareness, BEARHFTI created a *2016 Outreach Plan* in February of 2016, and stated that it was prepared to do things such as increase the number of advisory committee meetings to three annual meetings to ensure licensees and stakeholders are apprised of its activities; update its website to be more user-friendly and provide relevant information; create outreach materials, including content on a YouTube site; make materials available in additional languages; and, conduct outreach at community events. BEARHFTI has made updates to its website and has posted pertinent information about the EAR and the HFTI programs, as well as posting disciplinary actions. BEARHFTI also reports that it has revised its inspection procedures to increase compliance.

Although BEARHFTI updated its website in 2016 which made it more user-friendly and provided enhanced information and resources for consumers about both the HFTI and EAR programs, there is currently no information provided about the Household Movers Program. In addition, BEARHFTI does not currently webcast its Council meetings. Given the important issues that the Council advises on, and the extensive knowledge of industry and industry-related issues provided by Council members, providing better consumer access to these important meetings could benefit both consumers and industry.

Webcasting is a commonly used and helpful tool for licensees, consumers, and other stakeholders to monitor boards or bureaus in real-time and better participate when unable to physically attend meetings. Webcasting provides greater access for consumers and licensees alike and also improves transparency and provides a level of detail that cannot be captured in the meeting summaries or posted information on a website. Currently, BEARHFTI does not provide for the webcasting of Council meetings.

Staff Recommendation: *BEARHFTI should advise the Committees on its progress to enhance public outreach and consumer and industry awareness. BEARHFTI should advise the Committees on when it will add information to its website regarding household movers and if there are any plans to webcast future Council meetings. In addition, it should advise the Committees on its commitment to conducting three advisory committee meetings per year.*

ISSUE #6: (HOUSEHOLD MOVERS PROGRAM) Is BEARHFTI prepared for its new oversight role of the household movers program?

Background: SB 19 (Hill, Chapter 421, Statutes of 2017), removed oversight of the Household Movers Program from the jurisdiction of the PUC and transferred it to the Division of Household Movers under the jurisdiction of BEARHFTI. Under BPC § 19225.5(h), a household mover is defined as including “every corporation or person, their lessees, trustee, receivers or trustees appointed by any court whatsoever, engaged in the transportation for compensation, or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state”.

In order to obtain a license as a household goods carrier, an individual will be required to submit an application, pay a fee, pass an examination which will be established by BEARHFTI, provide a copy of workers compensation insurance (if employing persons), submit to a fingerprint background check through the Department of Justice and provide evidence of the appropriate insurance or bond coverage. Application processing for household movers will be more comprehensive than the application processing of BEARHFTI’s current licensing population. For example, in order to obtain a Thermal Insulation Manufacturer License, an applicant must fill out a two-page application (sign under penalty of perjury that the information on the application is correct) and pay a fee. Also, current licensees under BEARHFTI’s jurisdiction are not required to comply with fingerprinting requirements as part of a background check.

BEARHFTI currently utilizes field inspectors and in-house inspectors for its current enforcement programs. BEARHFTI reported in its *2017 Sunset Review Report*, that the “overall vacancy rate has now risen to 15 percent compared to nine percent in FY 2013-14 primarily due to field staff transferring to other positions and the retirement of senior field staff”. Under the new Household Movers Act, BPC § 19260.2 permits BEARHFTI to have access to records for investigative and inspection purposes; and, BPC § 19260.3 permits BEARHFTI employees to inspect and examine any lands, buildings, equipment, accounts, books, records and other documents for household movers.

An inspection program is important for consumer protection as it helps to ensure compliance with licensing laws. In the conclusion of BEARHFTI’s July 1, 2015 report to the Legislature, BEARHFTI acknowledged it needed to “increase the number of Wholesaler, Importer, and Manufacturer Compliance inspections”. In addition, the *Market Condition Assessment Fine Report 2015* conducted by CPS HR Consulting at the request of BEARHFTI noted that “the Bureau’s limited number of inspectors and lower visibility to consumers has resulted in less efficient consumer protection.” With a current shortage of inspectors for its current licensing program, it is important for BEARHFTI to provide its administrative plans for the household movers program to ensure proper oversight.

As noted previously, BEARHFTI already oversees two funds, HFTI and EAR. With the addition of the Household Movers Program, BEARHFTI will have to administer three separate funds for multiple licensure categories, enforcement, pro rata, and other administrative expenses.

BPC § 19229.1 places new requirements on BEARHFTI related only to the Household Movers Program including: 1) holding application workshops for potential applicants around the state; 2) implementing electronic case tracking of complaints; 3) implementing a process for timely enforcement against illegally operating household movers; 4) maintaining relationships and implement outreach and education programs with local law enforcement, district attorneys and airports; and, 5)

meeting with household trade associations annually, among other requirements. Although BEARHFTI has an advisory council with industry and public member composition, it is not required to meet a designated number of times per year, and in the past, BEARHFTI has acknowledged challenges with holding meetings. The addition of the Household Movers Program will require BEARHFTI to meet with industry trade associations at a minimum once a year, a requirement BEARHFTI does not have to meet for its other licensing groups.

Staff Recommendation: *BEARHFTI should advise the Committees on its current preparation efforts for adding the household movers program under its jurisdiction and any anticipated challenges associated with meeting the requirements of BPC § 19229.1.*

BEARHFTI LICENSING ISSUES

ISSUE #7: (LICENSE TYPE CONSOLIDATION) Should BEARHFTI consolidate or eliminate license types to improve efficiency?

Background: The regulatory landscape of BEARHFTI evolved in order to stay current with technological advances. Particularly within the appliance repair industry, where at one time, people would repair a broken toaster or a television, today's market allows consumers to easily purchase new, lower cost appliances, rather than have to seek repairs.

The issue of license types and consolidating licenses to avoid confusion for licensees and administrative efforts was raised during BEARHFTI's previous sunset review. At that time, Committee staff noted that the larger the number of licensure categories and overlap of license activity, the more confusing for licensees and the administration of regulatory programs. BEARHFTI currently issues a Retail Furniture Dealers License, (2,055 licensees), a Retail Bedding Dealers License (1,960 licensees) and a combination Retail Furniture and Bedding License (11,879 licensees). The fees for independent furniture and bedding retailer licenses are currently \$150 while the combined furniture/bedding retailer license is \$300. It is unclear why the combination retailer license is twice the amount of the independent retailer licenses. For example, are there additional inspections or other administrative costs associated with the combination license?

AB 2740 required BEARHFTI to conduct market condition assessments to study both the EAR and the HFTI markets to determine if the current statutes and regulations reflect the needs of the markets, where risk to consumers is the greatest, and whether continued regulation is clearly necessary against all segments of the market. With respect to the furniture/bedding, furniture, and bedding retailer license categories, the report noted that "according to Bureau management, there are more advantages than disadvantages to instituting a single furniture and bedding license than keeping the current three licenses." Those advantages included: 1) the BEARHFTI would not have to make adjustments if a licensee decides to diversify their product line; 2) there would be fewer license types and a reduced workload for licensing and enforcement staff; and 3), consolidation would be consistent with other license types in the past. The single disadvantage was the cost differential between the combined and independent retailer license.

Under current law, EAR and thermal insulation manufacturer licensees are renewed annually and HFTI licenses are renewed biennially. *The Market Condition Assessment Final Report 2015* raised the issue of the different renewal cycles for both programs. The report stated "the bureau licenses/registers

approximately 39,500 licenses. About 45% of the licenses are renewed on an annual basis and 55% on a biennial basis. If all the licenses were renewed on an annual basis this would result in larger and more predictable annual revenue stream to pay for operations.” The report further stated that the BEARHFTI reported an additional benefit as it would help to increase enforcement effectiveness by catching unlicensed businesses. In the conclusion of BEARHFTI’s *2015 Report to the California State Legislature*, it was stated that this is an issue that the Legislature may wish to examine during BEARHFTI’s 2018 sunset review. While the discussions have focused on EAR and HFTI programs falling under an annual renewal cycle, the issue has not been raised for the household mover licenses, which are currently biannual renewals.

Staff Recommendation: *BEARHFTI should advise the Committees on any consideration for consolidating license types, including merging the Wholesaler, Importer, and Manufacturer License into two license types and combining the Furniture/Bedding Retailer, Furniture Retailer and the Bedding Retailer license into one license. Additionally, BEARHFTI should advise the Committees on any challenges associated with merging or consolidating licenses. BEARHFTI should advise the Committees on establishing an annual renewal cycle for all licensees, and if there is consideration for moving the household movers’ licensees to an annual renewal cycle.*

BEARHFTI ENFORCEMENT ISSUES

ISSUE #8: (DISCIPLINARY GUIDELINES) Disciplinary Guidelines allow regulatory entities within DCA to establish consistency in disciplinary penalties for similar offenses on a statewide basis and create uniform guidelines for violations of a particular practice act. Guidelines are used by Administrative Law Judges, attorneys, licensees and others involved in a regulatory program’s disciplinary process. BEARHFTI’s Disciplinary Guidelines have not been updated since 1997. What is the status of updating these?

Background: The disciplinary guidelines for both the EAR and HFTI programs were last updated in 1997. BEARHFTI noted in its *2017 Sunset Report* that it is working to update its guidelines. It would be helpful for the Committees to understand what efforts the BEARHFTI is undertaking to update these guidelines, particularly efforts to ensure that all license categories are reflected in these guidelines, given the many changes to BEARHFTI’s regulatory landscape since 1997.

Staff Recommendation: *BEARHFTI should advise the Committees on its efforts to update Disciplinary Guidelines.*

ISSUE #9: (UNLICENSED ACTIVITY AND THE TELEPHONE DISCONNECT PROGRAM). BPC § 149 authorizes BEARHFTI to request for the disconnection of telephone services when the telephone service is associated with the advertising of unlicensed activity in any form of advertisement. Is this a useful tool for BEARHFTI to address unlicensed activity?

Background: Unlicensed activity continues to be an issue for BEARHFTI and is one of the top reasons BEARHFTI issues citations. While BEARHFTI reports that it cannot definitively identify the

licensure category with the greatest amount of unlicensed activity, it reports the most complaints received and citations issued are for those engaged in unlicensed electronic and appliance repair.

Under BPC §149, if a specified entity, including BEARHFTI, has probable cause to believe that a person is advertising and offering services that he or she is not licensed or registered to perform, the entity may issue a citation to the violator to stop the unlawful advertising and notify the telephone company to disconnect the number in that unlawful advertising. If he or she fails to comply with the order of correction, the entity is required to notify PUC of the violation, and the PUC is mandated to require the telephone provider for the violator to disconnect the telephone number listed in the unlawful advertisement. Once the business comes into compliance, e.g. citation is paid and license or registration is issued or renewed, staff will send a memorandum to the telephone service provider that the business is now compliant and needs to have the phone number turned back on.

Historically, BEARHFTI reports it successfully utilizes the telephone disconnect to address unlicensed activity, but with technology changes, advertising had expanded outside of telephone directories which was limited in law. As a result, SB 1243 (Lieu, Chapter 395, Statutes of 2014), among numerous other provisions, expanded the use of BPC § 149, by providing all DCA entities with the authority to request the disconnection of telephone services when the telephone service is associated with the advertising of unlicensed activity in any form of advertisement, not just in a telephone directory as was previously permitted. As BEARHFTI acknowledged, unlicensed activity continues to be an issue. BEARHFTI reports that it has an in-house investigative staff which inspects businesses' websites and advertisements to identify violations for unlicensed activity and others. While the BEARHFTI has reported success in the past with the telephone disconnect program, it is unclear what the current enforcement-related statistics are for this program.

Staff Recommendation: *BEARHFTI should advise the Committees on its success for addressing unlicensed activity through the use of the telephone disconnect program and whether or not additional program changes are warranted? In addition, BEARHFTI should advise the Committees on the number of business that come-into compliance with licensing requirements as a result of the utilization of the program.*

ISSUE #10: (FLAMMABILITY STANDARDS). Update on Technical Bulletin (TB) 117-2013. Are there compliance issues or product testing challenges?

Background: In 1972, the California Legislature passed AB 2165 (Burton, Chapter 1183, Statutes of 1972) which required establishing flammability standards for upholstered products in California. BEARHFTI was ultimately tasked with determining those standards along with enforcing for compliance.

Flammability standards in California were developed through regulations in the form of a technical bulletin—TB 117. TB 117 required that the concealed filling materials of upholstered furniture undergo individual and component testing to ensure they pass an open-flame and cigarette smolder test. The cover fabric of upholstery was required to withstand a one-second small flame test and the interior filling material was required to withstand exposure to open-flame and smolder testing. While this performance-based standard did not prescribe how manufacturers should have met the standard, manufacturers typically complied with TB 117 by using foam treated with flame retardant chemicals. This applied to all upholstered furniture including juvenile products. Many other products were

voluntary designed to comply with the standards in an effort to meet fire safety standards. California was the only state to have flammability standards and as a result, industry widely adopted California's standards for all of their products, making those standards a national trend.

In response to mounting concerns that the chemicals used in flame retardants were carcinogenic and hazardous to human health and the environment in 2012, BEARHFTI was directed by Governor Brown to revise the flammability standards for upholstered furniture. In addition to the health concerns from the chemicals, BEARHFTI noted that the existing standard did not adequately address the flammability performance of upholstered furniture in an actual fire.

The revised regulations, TB 117-2013, became effective on January 1, 2014 and manufacturers had one year to comply with updated standards. The new testing standards are based, in part, on the American Society for Testing Material (ASTM standard) and received input from industry, stakeholders, and experts.

Current law (BPC § 19161) specifically requires all mattresses and mattress sets manufactured for sale in California to be fire retardant—meaning those items must meet the open-flame test adopted by the United States Consumer Product Safety Commission. Additionally, all other bedding products that BEARHFTI determines to contribute to mattress bedding fires must also be resistant to open-flame ignition. In order to ensure compliance with California law, BEARHFTI must conduct product testing. According to BEARHFTI, with the recent adoption of TB 117-2013, there has been a decrease in upholstered furniture failure rates. Since TB 117-2013 took effect, BEARHFTI reports that failure rates have decreased to approximately 2 percent.

Staff Recommendation: *BEARHFTI should update the Committees on inspections and compliance testing. Are all manufactures currently in compliance with the new standards? Are there any outstanding issues that BEARHFTI has been made aware of?*

ISSUE #11: (LABELING REQUIREMENTS). SB 1019 took effect in 2014, requiring labeling on certain products about the use of flame retardants. What is the status of SB 1019 implementation?

Background: In response to health and environmental concerns associated with the use of certain flame retardant chemicals in upholstered furniture, in 2014, SB 1019 (Leno, Chapter 862, Statutes of 2014), was signed into law. That bill required manufacturers of upholstered furniture to include a label on all of their products denoting whether or not that item has added flame retardant chemicals in the product.

As a result of BEARHFTI's updated California's flammability standards, TB 117-2013, manufacturers are able to meet flammability standards without using flame retardant chemicals which were commonly used prior to 2014 in order to meet California's prior flammability standards. Although the TB117-2013 allows manufacturers to meet the new standards without the use of flame retardant chemicals, it does not prohibit their use in California products.

To achieve compliance with the labeling requirements, SB 1019 established a mandatory testing process administered by BEARHFTI and in conjunction with the Department of Toxics and Substance Control (DTSC). BPC § 19094(D) specifically requires BEARHFTI to provide the DTSC with a

selection of samples from certain upholstered products that state that “NO” flame retardant chemicals on the label for compliance testing purposes. BEARHFTI must reimburse the DTSC for the cost of testing and no later than August 1 of each FY, BEARHFTI is required to assess its available resources to determine the number of tests to be completed in that FY. Enforcement for the labeling requirements is under the jurisdiction of BEARHFTI and fines are specified in statute (BPC § 19094(E)). Fines start at a minimum of \$1000 for the first violation and can reach \$10,000 for four or more violations. Furthermore BEARHFTI is required to provide enforcement information for violations of BPC § 19094 on its website. While BEARHFTI does have enforcement related data available on its website, no citations for violations of BPC § 19094 are easily identifiable.

Staff Recommendation: *BEARHFTI should advise the Committees on any compliance or enforcement issues related to SB 1019 (BPC § 19094). Additionally, BEARHFTI should advise the Committees on how it determines the appropriate number of tests for DTSC to conduct annually and what, if any, factors cause the testing numbers to vary. BEARHFTI should advise the Committees on how it provides outreach and education to manufacturers and whether or not it provides easily identifiable information on its website regarding citations or enforcement outcomes.*

PRACTICE ACT ISSUES

ISSUE #12: (SERVICE CONTRACT WORKING GROUP) BEARHFTI established a Service Contract Working Group comprised of stakeholders and industry members to help determine which areas of law need updates, clarifications, or revisions, if any. What is the status of the workgroup’s efforts?

Background: As part of the EAR program, BEARHFTI regulates 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 and those retailers with multiple locations are required to have a separate registration for each location that sells service contracts. Further, companies offering a contract via the internet must also have a registration for contracts sold to California residents. Service contracts generally provide for the pre-paid repair or replacement of specified consumer products.

The regulation of service contracts under BEARHFTI’s jurisdiction began in 1993 in response to service contract administrators selling service contracts without the appropriate financial backing. At the onset of regulation in California, service contracts were specific to consumer electronic equipment and home appliances. Since the early 1990’s, the regulation of service contracts has evolved to keep pace with new technology. Today, there are a variety of consumer products for which service contracts are available, including furniture, electronics, appliances, home healthcare products, jewelry, fitness equipment, and most recently, 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. The most recent product authorized for a service contract was the result of AB 480 (Calderon, Chapter 421, Statutes of 2013) which included optical products in the current definition of a retail service contract.

Laws pertaining to service contracts and warranties also fall under the jurisdiction of the Song-Beverly Act (Civil Code § 1790 *et seq.*) which was originally established to regulate warranty products which are separate from service contracts. A warranty is typically included in the price of the item, whereas a service contract comes at an additional cost. Service contracts are separate and apart from a manufacturer's warranty in that it is an additional item purchased separately from the product. Additionally, warranty products are regulated through the insurance code, while service contracts are regulated in BPC § 9855 *et seq.*

Upon completion of the market condition assessment required by AB 2740, BEARHFTI determined that it needed to conduct an additional assessment of the service contract industry. In order to provide an appropriate review of the industry, BEARHFTI established a "Service Contract Working Group" (SCWG) comprised of stakeholders and industry members to help determine which areas of law need updates, clarifications, or revisions, if any. The SCWG was comprised of 8 members including representatives from: Macy's; Best Buy; Professional Servicers Association of California; Cozen O'Connor; Meenan Law Firm/Service Contract Industry Council; the California Department of Insurance; BEARHFTI's Advisory Council; and, the California Retailers Association.

The SCWG recently released a report titled *Recommendations of the Service Contract Working Group*. That report provided a number of recommendations for changes or revisions within the service contract regulatory program. Some of those recommendations include, but are not limited to, ensuring product cancellation of coverage consistency (making a 30-day cancellation period consistent across products); 2) reviewing the jurisdiction of products which service contracts can be offered, 3) creating a better definition between service contracts and insurance; and 4), updating insurer's notification requirements to BEARHFTI. There have not yet been changes or statutory updates stemming from the SCWG's recommendations. It would be helpful for the Committees to better understand the impacts of proposed changes and determine what updates, if any, should be made.

Staff Recommendation: *BEARHFTI should advise the Committees on the SCWG's efforts, including any potential impacts to consumers, the public or licensees that BEARHFTI anticipates from implementing any of the recommendations of the SCWG's report.*

ISSUE #13: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACTS ADMINISTERED BY BEARHFTI AND BEARHFTI OPERATIONS.) There are amendments to the Acts BEARHFTI administers that are technical in nature but may improve BEARHFTI operations and the enforcement of the various practice acts.

Background: There are instances in the various acts administered by BEARHFTI where technical clarifications may improve BEARHFTI operations and application of the statutes governing the BEARHFTI's work.

Staff Recommendation: *The Committees may wish to amend the various practice acts to include technical clarifications.*

CONTINUED REGULATION OF THE ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND HOUSEHOLD MOVERS INDUSTRIES BY THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,

HOME FURNISHINGS AND THERMAL INSULATION

ISSUE #14: (CONTINUED REGULATION BY BEARHFTI). Should the licensing and regulation of electronic and appliance repair, home furnishings and thermal insulation, and household goods carriers be continued and be regulated by the BEARHFTI?

Background: Although the BEARHFTI reports a decrease in enforcement-related actions, there are still a substantial number of complaints being received and investigated by BEARHFTI and a number of enforcement activities with respect to out-of-country, out-of-state, and unlicensed activity that warrants BEARHFTI's continued regulation. BEARHFTI's role in ensuring flammability labeling standards, ensuring safe furniture and other consumer products, administering and enforcing contract service providers, along with its new role overseeing the household movers industry helps to maintain the health, safety and welfare of consumers. As noted above, BEARHFTI needs to continue to monitor its licensee population to ensure that only products which necessitate continued regulation are regulated; BEARHFTI needs to focus on consumer outreach, maintaining product safety and updating regulations as necessary.

The current regulation of electronic and appliance repair, thermal insulation, home furnishings, and household movers industries should be subject to a four-year sunset date as is consistent with other regulated professions under the jurisdiction of the DCA. A sunset date provides the legislature, the professions, and stakeholders with an opportunity to determine whether or not continued regulation of the profession is necessary, along with the opportunity to review the effectiveness and efficiency of the agency in protecting consumers, and identify whether changes in the law or operations are necessary. To that end, BEARHFTI along with its licensing and registration programs should be subject to repeal and reviewed again in four years so that the Legislature may once again determine whether the issues and recommendations in this Background Paper have been addressed, and whether or not the licensed and registered entities within the BEARHFTI should be reduced, expanded or remain the same.

Staff Recommendation: *Recommend that the licensing and regulation of the electronic and appliance repair industry, the home furnishings industry, service contract industry, thermal insulation industry and soon-to-be household movers industry, continue to be regulated by BEARHFTI in order to protect the interests of the public and the regulated professions and BEARHFTI be reviewed once again in four years.*