



1-1-1990

Consumer Protection

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Consumer Protection*, 21 PAC. L. J. 397 (1990).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol21/iss2/15>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Consumer Protection

Consumer Protection; automatic dialing-announcing devices

Public Utilities Code § 2874 (amended).
AB 1426 (Roybal-Allard); 1989 STAT. Ch. 100

Existing law requires an automatic dialing-announcing device¹ to be operated by a person who must state the nature of the call and the name, address, and telephone number of the business organization.² The person must ask the consumer for permission to play a prerecorded message prior to playing the message.³ Chapter 100 requires that this information must be provided by a natural voice announcement.⁴

JMM

1. See CAL. PUB. UTIL. CODE § 2871 (West Supp. 1989) (definition of automatic dialing-announcing device).

2. *Id.* § 2874(a) (amended by 1989 Cal. Stat. ch. 100, sec. 1, at ____).

3. *Id.*

4. 1989 Cal. Stat. ch. 100, sec. 1, at ____ (amending CAL. PUB. UTIL. CODE § 2874(a)). Upon completion of the call, the calling person must disconnect the automatic dialing-announcing device. *Id.* (amending CAL. PUB. UTIL. CODE § 2874(b)).

Consumer Protection; automobile sales contract

Civil Code § 2982.05 (new).
AB 2098 (Lempert); 1989 STAT. Ch. 1141
Support: Consumers Union, California Automobile Associations.
Opposition: California Advocates Incorporated.

Existing law regulates the content of contracts for the sale of automobiles.¹ Chapter 1141 requires a sales contract to include a

1. CAL. CIV. CODE § 2982 (West Supp. 1989).

provision that prohibits the seller from changing the financing stipulated in the contract after the buyer has received possession of the automobile.²

JMF

2. 1989 Cal. Stat. ch. 1141, sec. 1, at ____ (enacting CAL. CIV. CODE § 2982.05). Chapter 1141 was introduced in response to complaints filed with the Consumer Union. *Telephone interview with Bruce Ointkowski*, Staff member of Assemblymember Lempert's office, in Sacramento (Sept. 6, 1989) (notes on file at the *Pacific Law Journal*). The contract must state the following:

If [the buyer] ha[s] complaints concerning this sale, [the buyer] should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or to the Department of Motor Vehicles. . . . After [the buyer] has received possession of the vehicle, the seller cannot change the financing or payment terms stated in the contract. 1989 Cal. Stat. ch. 1141, sec. 1, at ____ (enacting CAL. CIV. CODE § 2982.05).

Consumer protection; dating service and weight loss contracts—cancellation

Civil Code §§ 1694, 1694.1, 1694.2, 1694.3, 1694.4, 1694.5, 1694.6, 1694.7, 1694.8, 1694.9 (new).

AB 320 (Speier); 1989 STAT. Ch. 138

Support: Attorney General; Patricia Moore Matchmaking Specialists; California Consumer Affairs Association; District Attorneys of Santa Clara, San Francisco, and San Mateo; Department of Consumer Affairs; KCBS Radio Call For Action.

Opposition: Great Expectation

Chapter 138 allows a person entering into a dating service¹ or weight loss² contract to cancel the contract by midnight of the third business day following formation.³ Chapter 138 requires that these

1. See 1989 Cal. Stat. ch. 138, sec. 1, at ____ (enacting CAL. CIV. CODE § 1694) (definition of dating service contract).

2. See *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.5(a)) (definition of weight loss contract).

3. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(a)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(a)). The buyer must send written notice of cancellation to the seller by telegram or registered mail. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(b)); *id.*

contracts be in writing and that a copy be delivered to the consumer.⁴ The contract must inform buyers how they may cancel a contract⁵ and buyers may not be required to make payments on the contract after two years from formation.⁶ Buyers may be relieved from making payments if they die or become disabled,⁷ or if they move their primary residence beyond fifty miles from the weight loss center or dating service office.⁸ Moreover, any contract entered into under willful and fraudulent information from the seller is considered void.⁹

A contract that does not comply with Chapter 138 is void or voidable,¹⁰ and a waiver of Chapter 138 provisions is void.¹¹ Further,

sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(b)). If notice is sent by mail, cancellation is effective when the notice is deposited in the mail. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(c)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(c)). However, the buyer may stop a payment by notifying the seller by telephone. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(f)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(f)). Notice of cancellation is effective if the buyer indicates an intent not to be bound by the contract, even if this notice does not conform to a particular manner of cancellation required under the contract. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(d)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(d)). Any money paid to the seller must be refunded within 10 days of receipt of the notice of cancellation, except money for services rendered under the contract before the cancellation. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.1(e)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.6(d)).

4. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.2(a)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.7(a)).

5. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.2(b)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.7(b)).

6. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.2(d)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.7(d)). A contract may not contain any term that is measured by the life of the buyer. *Id.* However, the services provided under a dating service contract may be rendered to the buyer beginning within six months of, and ending within three years of, formation. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.2(d)).

7. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.3(a)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.8(a)). If the buyer has prepaid for services, money for unreceived services must be promptly refunded to the buyer or the buyer's representative. *Id.* If the buyer's disability is diagnosed to last less than six months, the seller may extend the contract's term for six months as an alternative to cancellation. *Id.* See *id.* (definition of disability).

8. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.3(b)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.8(b)). The buyer may be relieved from making payments, or may receive a refund for unreceived services, only if the contract cannot be transferred to a comparable facility. *Id.* However, if the buyer chooses to be relieved from making payments, the buyer may be charged a fee no greater than \$100, or no more than \$50, if more than half of the contract has expired. *Id.*

9. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.4(b)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.9(b)).

10. Compare *id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.2(e)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.7(e)) (contracts violating Chapter 138 are voidable) with *id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.4(a)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.9(a)) (contracts violating Chapter 138 are void).

11. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.4(e)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.9(e)).

buyers injured by a violation of Chapter 138 may bring an action to recover treble damages.¹²

TFT

12. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1694.4(c)); *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1694.9(c)). The prevailing party may also recover reasonable attorney fees. *Id.*

Consumer Protection; public utilities—security deposits and credit check system

Government Code § 60375.5 (new); Public Utilities Code §§ 761.5, 779.5, 10009.6, 12822.6, 16481.6 (new).
AB 1831 (Murray); 1989 STAT. Ch. 1066

Existing law permits the Public Utilities Commission¹ to order a telephone corporation² to share its residential customers' personal credit information with other public utilities³ for the purpose of detecting credit risks among new customers.⁴ Chapter 1066 expands existing law by permitting the Commission to authorize electric and gas corporations to share credit information concerning customers when the Commission determines it would be cost-effective.⁵ Chapter 1066 also provides that if a public utility,⁶ district,⁷ or electric, gas,

1. See CAL. CONST. art. XII, §§ 1-6 (West Supp. 1988) (explanation of Commission's membership, duties, and procedures).

2. See CAL. PUB. UTIL. CODE § 204 (West 1975) (definition of corporation).

3. See *id.* § 2891(a)(2) (West Supp. 1989) (the commission can order the information to be made available to any electrical, gas, heat, telephone, telegraph, or water corporation).

4. *Id.*

5. 1989 Cal. Stat. ch. 1066, sec. 2.5, at ____ (enacting CAL. PUB. UTIL. CODE § 761.5(a)). The purpose of the credit check system is to alert utilities to subscribers who are known credit risks. *Id.* sec. 1, at _____. An appropriate credit check system which involves the sharing of information between public utilities can greatly enhance a utility's ability to discover a subscriber's habits with regard to paying utility bills. *Id.* Electric and gas corporations may share a customer's credit information with telephone corporations. *Id.* sec. 2.5, at ____ (enacting CAL. PUB. UTIL. CODE § 761.5(a)). A public utility may not use a customer's financial information for its own internal marketing purposes, but it may release pertinent information to a collection agency for the purpose of collecting an outstanding bill. *Id.*

6. See CAL. PUB. UTIL. CODE § 216 (West Supp. 1989) (definition of public utility).

7. See CAL. GOV'T CODE § 56036 (West Supp. 1989) (definition of district).

heat, telephone, or water corporation requires a new residential applicant to deposit money prior to establishing an account and furnishing service, the need for the security deposit must be based solely upon the credit worthiness of the applicant.⁸

BAS

8. 1989 Cal. Stat. ch. 1066, sec. 2, at ____ (enacting CAL. GOV'T CODE § 60375.5); *id.* sec. 3, at ____ (enacting CAL. PUB. UTIL. CODE § 779.5); *id.* sec. 4, at ____ (enacting CAL. PUB. UTIL. CODE § 10009.6); *id.* sec. 5, at ____ (enacting CAL. PUB. UTIL. CODE § 12822.6); *id.* sec. 6, at ____ (enacting CAL. PUB. UTIL. CODE § 16481.6). The decision to require a deposit and the residential applicant's credit worthiness shall be determined solely by the utility, district, or corporation. *Id.*

Consumer Protection; unlisted access numbers

Public Utilities Code § 2891.1 (new).
AB 936 (Hughes); 1989 STAT. Ch. 120
Support: Public Utilities Commission
Opposition: Pacific Bell

Except in certain circumstances,¹ existing law prohibits telephone and telegraph corporations² from releasing specified residential customer information without prior consent.³ Chapter 120 prohibits any telephone corporation that releases lists of residential customers from releasing any unlisted or unpublished access number.⁴ Chapter 120

1. Existing law does not prohibit the release of information: (1) Supplied by the customer to be used for telephone directories; (2) for directory assistance; (3) zip codes; (4) provided with the supervision of the Public Utilities Commission (Commission) to a collection agency for the collection of unpaid debts; (5) provided for emergency services after a 911 call; (6) released to law enforcement agencies under a state or federally issued process; or (7) necessary for the Commission under its jurisdiction and control. CAL. PUB. UTIL. CODE § 2891(d) (West Supp. 1989). See *id.* § 20 (West Supp. 1989) (definition of Commission).

2. See *id.* §§ 234 (West Supp. 1989) (definition of telephone corporation), 236 (West 1975) (definition of telegraph corporation).

3. *Id.* § 2891(a) (West Supp. 1989). Information prohibited from release includes personal calling patterns, credit or personal financial information, services provided, or demographic information. *Id.*

4. 1989 Cal. Stat. ch. 120, sec. 1, at ____ (enacting CAL. PUB. UTIL. CODE § 2891.1(a)). Any customer may waive part or all of Chapter 120's protection by written consent to the telephone corporation. *Id.* (enacting CAL. PUB. UTIL. CODE § 2891.1(b)) (this subsection (b) is the first listed (b) of § 2891.1). Chapter 120 defines unlisted or unpublished access numbers

does not apply to the release of unlisted or unpublished access numbers to certain parties for specific purposes.⁵ Under Chapter 120, a deliberate violation is grounds for a civil suit against the responsible corporation and employees.⁶

BJM

as any telephone, telex, teletex, facsimile, computer modem, or code number assigned by the telephone or telegraph corporation to receive communications that the customer requests be kept confidential. *Id.* (enacting CAL. PUB. UTIL. CODE § 2891.1(c)) (this subsection (c) is the second listed (c) in § 2891.1).

5. *Id.* (enacting CAL. PUB. UTIL. CODE § 2891.1(c)) (this subsection (c) is the first (c) listed in § 2891.1). Exemptions include: releases supervised by the Commission exclusively to collect unpaid debts, releases for emergency services after a 911 call concerning threatened life or property, releases under a state or federally issued process, releases to another telephone corporation providing service to the customer between service areas, or releases to the Commission under its jurisdiction and control. *Id.*

6. *Id.* at ____ (enacting CAL. PUB. UTIL. CODE § 2891.1(b)) (this subsection (b) is the second (b) listed in § 2891.1). However, with the deliberate violation requirement, a case against a telephone corporation must prove specific intent as fact. *See People v. Maciel*, 71 Cal. App. 213, 218, 234 P. 877, 879 (1925) (specific intent as an element of a crime is not presumed from the unlawful act, but must be proved as fact).