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Consumer Protection

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Consumer Protection

Consumer Protection; check cashers

Civil Code §§ 1789.35, 1789.37 (new).
AB 2400 (Peace); 1992 STAT. Ch. 1043

Existing law requires every check casher¹ to post a fee schedule for cashing checks.² Chapter 1043 prohibits a check casher from charging a fee of greater than 3% to 3.5% of the face amount of the check, depending on whether identification is shown, or \$3.00, whichever is greater.³ Additionally, a check casher is prohibited from charging any fee of more than \$10.00 for setting up an initial account for providing check-cashing services.⁴ Chapter 1043 also requires a check casher to provide a receipt to each customer for every transaction.⁵ A willful violation of these requirements may be

1. See CAL. CIV. CODE § 1789.31 (West Supp. 1992) (defining check casher as a person or entity that engages in the business of cashing checks, warrants, drafts, money orders or other commercial paper in exchange for compensation).

2. *Id.* § 1789.30 (West Supp. 1992); see *id.* § 1789.32 (West Supp. 1992) (establishing that failure to post a fee schedule constitutes an unfair business practice under § 17200 of the Business and Professions Code).

3. *Id.* § 1789.35(a) (enacted by Chapter 1043); cf. CONN. GEN. STAT. §§ 36-568 (West Supp. 1992) (permitting a maximum fee of 1% of the face value of the check); GA. CODE ANN. § 7-1-706 (Michie Supp. 1992) (permitting a maximum fee of 3% of the face value of the check or \$5); ILL. REV. STAT. ch. 121 1/2, para. 1902 (1992) (permitting a maximum fee of 1% of the face value of the check or \$.50); MINN. STAT. ANN. § 53A.07 (West Supp. 1992) (permitting check-cashing fees only upon approval of the state commissioner). See generally Liz, *Check Cashers Agree to Regulation of Their Charges*, 14 L.A. BUS. J. 5, 6 (1992) (discussing the compromise between the California Check Cashiers Association and Assemblyman Peace over the maximum percentage rate contained in Chapter 1043).

4. CAL. CIV. CODE § 1789.35(b) (enacted by Chapter 1043).

5. *Id.* § 1789.35(c) (enacted by Chapter 1043).

punishable as a misdemeanor.⁶ Chapter 1043 requires any owner of a check-cashing business to register with the Department of Justice.⁷

LGC

Consumer Protection; consumer credit--credit services organizations

Civil Code § 1789.25 (new); §§ 1785.17, 1789.12, 1789.13, 1789.14, 1789.15, 1789.16, 1789.18, 1789.21 (amended).
AB 2999 (Peace); 1992 STAT. Ch. 651

Existing law prohibits credit services organizations¹ from (1) receiving payment before completing services for a buyer,² (2) receiving payment for referring the buyer to a retail seller or other

6. *Id.* § 1789.35(d) (enacted by Chapter 1043); *see* CAL. PENAL CODE § 17(b) (West Supp. 1992) (defining a misdemeanor as a crime punishable, in the discretion of the court, by imprisonment in state prison or by fine or imprisonment in the county jail).

7. CAL. CIV. CODE § 1789.37 (enacted by Chapter 1043); *cf.* CONN. GEN. STAT. ANN. § 36-566 (West Supp. 1992) (requiring registration of check-cashing businesses); WASH. REV. CODE ANN. § 31.45.040 (West Supp. 1992) (requiring check-cashing businesses to apply for licenses). *But cf.* Columbus Checkcashiers Inc. v. Stiles, 565 N.E.2d 883, 885 (Ohio Ct. App. 1990) (stating that businesses operating solely to cash checks for a fee are unlicensed and unregulated in Ohio).

1. *See* CAL. CIV. CODE § 1789.12(a), (e) (amended by Chapter 651) (defining credit services organization as an individual, corporation, partnership, joint venture, or any business entity who, with respect to the extension of credit by others, represents that he or she will provide any of the following services in return for payment: (1) Improving a buyer's credit record, history, or rating; (2) obtaining a loan or other extension of credit for a buyer; or (3) providing advice or assistance to a buyer with regard to either of the services listed above); *id.* § 1789.13 (amended by Chapter 651) (providing that the credit services organization's salespersons, agents, representatives, and independent contractors are also prohibited from the practices in § 1789.13). *See generally* James P. Nehf, *A Legislative Framework for Reducing Fraud in the Credit Repair Industry*, 70 N.C. L. REV. 781, 781 (1992) (stating that in recent years this new industry which promises to improve a person's credit rating for a fee has grown, and that instances of fraud in the credit repair industry are widespread, causing a rising tide of consumer complaints); *id.* at 781-82 (reporting that the use of credit by consumers has increased dramatically, and that outstanding credit card debt on Visa and MasterCard accounts alone increased from \$20 billion in 1981 to \$154 billion in 1990).

2. *See* CAL. CIV. CODE § 1789.13(c) (amended by Chapter 651) (stating that payment for such a referral is prohibited if the credit which is extended to the buyer is on substantially the same terms available to the public, or the credit extended is on the same terms that the buyer would have received without the help of the credit services organization).

credit grantor who may extend credit, (3) advising a buyer to make a statement which is known to be false or misleading to a credit reporting agency or to a person who may extend credit to the buyer,³ or (4) using any false or misleading representations while selling the services of a credit services organization.⁴ Chapter 651 revises the definition of "credit services organization" to include those attorneys employed by or directly affiliated with a credit services organization.⁵ In addition, Chapter 651 prohibits credit services organizations from the following: (1) Failing to perform services within ninety days following the date the buyer signs the contract;⁶ (2) removing adverse credit information which is accurate and not obsolete;⁷ (3) assisting the buyer to create a new credit record by using a different name, address, social security number, or employee identification;⁸ (4) submitting a buyer's dispute to a consumer credit reporting agency without informing the buyer;⁹ and (5) calling a consumer credit reporting agency's on the telephone and representing the caller as the buyer when submitting a dispute or requesting disclosure without the buyer's prior authorization.¹⁰ Chapter 651

3. See *id.* § 1789.13(d) (amended by chapter 651) (listing the type of statements which are prohibited as those concerning a buyer's identification, home address, credit worthiness, credit standing, or credit capacity).

4. *Id.* § 1789.13(a), (c), (d), (g) (amended by Chapter 651).

5. *Id.* § 1789.12(a)(6) (amended by Chapter 651).

6. *Id.* § 1789.13(b) (amended by Chapter 651).

7. *Id.* § 1789.13(e) (amended by Chapter 651).

8. *Id.* § 1789.13(f) (amended by Chapter 651).

9. *Id.* § 1789.13(l) (amended by Chapter 651).

10. *Id.* § 1789.13(m) (amended by chapter 651); see *id.* § 1789.13(i)-(k) (amended by Chapter 651) (prohibiting advertising the services of the credit services organization without registering with the Department of Justice, failing to maintain an agent for service of process in California, and transferring or assigning the certificate of registration); *id.* § 1789.12(d) (amended by Chapter 651) (defining consumer credit reporting agency). See generally Nehf, *supra* note 1, at 804 (stating that consumers can benefit from legislation which protects the consumer from fraud by credit repair organizations and also allows legitimate credit services to be performed for compensation). Laws of other states also prohibit the receiving compensation for referring customers to a retail seller who may extend credit on the same terms as the general public, and using misleading statements when promoting credit services, or both. See, e.g., ARIZ. REV. STAT. ANN. § 44-1703(2)-(4) (Supp. 1991); ARK. CODE ANN. § 4-91-106(2)-(3) (Michie Supp. 1991); COLO. REV. STAT. § 12-14.5-104(1)(b)(c) (West 1991); D.C. CODE ANN. § 28-4603(2)-(4) (1991); HAW. REV. STAT. § 481B-12(a)(1)-(3) (Supp. 1991); ILL. ANN. STAT. ch. 121 1/2, para. 2105(2)-(4) (Smith-Hurd Supp. 1992); IND. CODE ANN. § 24-5-15-5(2)-(4) (West Supp. 1992); LA. REV. STAT. ANN. § 9:3573.3(2)-(4) (West 1991); NEV. REV. STAT. § 598.282(3)-(4) (1991); N.Y. GEN. BUS. LAW § 458-h(1)-(2) (McKinney Supp. 1992); OKLA. STAT. ANN. tit. 24, § 133(2)-(4) (West Supp. 1992); TENN. CODE ANN. § 47-18-

also prohibits a credit services organization from engaging in any fraudulent or deceptive act in connection with selling the services of the organization.¹¹ Under Chapter 651, prohibited practices would also apply to independent contractors of a credit services organization.¹²

Existing law authorizes a buyer injured by one of these violations or from a breach of contract by the credit services organization to bring an action to recover damages.¹³ Chapter 651 provides that an injured buyer may bring an action for recovery of damages, injunctive relief, or both.¹⁴ Chapter 651 also requires all credit services organizations to register with the Department of Justice, and specifies the information required¹⁵ on the registration application.¹⁶ The Department of Justice may verify the accuracy of the

1003(2)-(4) (1988); TEX. BUS. & COM. CODE ANN. § 18.03(2)-(4) (West Supp. 1992); VA. CODE ANN. § 59.1-335.5(2)-(4) (Michie 1992); W. VA. CODE § 46A-6C-3(2)-(5) (Supp. 1992); *cf.* GA. CODE ANN. § 16-9-59(b)(c) (Michie 1992) (prohibiting credit repair services in the state).

11. CAL. CIV. CODE § 1789.13(h) (amended by Chapter 651); *see id.* § 1789.13(g)(1)-(2) (amended by Chapter 651) (prohibiting misleading representations which include stating that the organization can delete an adverse credit history without clearly stating that this can only be done if the credit history is inaccurate or obsolete, or stating that the organization can obtain an extension of credit despite the buyers credit problems without clearly disclosing the eligibility requirements for obtaining an extension of credit).

12. *Id.* § 1789.13 (amended by Chapter 651).

13. *Id.* § 1789.21 (amended by Chapter 651).

14. *Id.*; *see id.* (stating that the judgment for actual damages should in no case be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs; punitive damages may also be awarded by the trial court).

15. *See id.* § 1789.25(a)(1)-(3) (enacted by Chapter 651) (stating the registration application must contain: (1) The name and business address of the credit services organization; (2) the names, addresses, and driver's license numbers of anyone who owns or controls at least ten percent of stock in the organization; and (3) either a full and complete disclosure of any litigation or filed complaints that relate to the operation of the organization, or an acknowledged declaration under penalty of perjury that no such litigation or complaint exists).

16. *Id.* § 1789.25(a) (enacted by Chapter 651); *see id.* (stating that the Department of Justice will not issue a registration certificate until the bond required by § 1789.18 has been filed with the office of the Secretary of State); *id.* § 1789.18 (amended by Chapter 651) (stating that a credit services organization may not conduct business in California unless it first obtains a surety bond for \$100,000, and listing the requirements for that bond); *see also id.* § 1789.25(d) (enacted by Chapter 651) (stating that the registration certificate will expire annually on the last day of December, but may be renewed by filing a renewal application). Laws of other states also require some type of registration; *see, e.g.*, IDAHO CODE § 26-2223 (1990); OKLA. STAT. ANN. tit. 24, § 141 (West Supp. 1992); W. VA. CODE § 46A-6C-5 (1992).

information provided in the registration application.¹⁷ Under Chapter 651, a credit services organization must notify the Department of Justice in writing of any changes in the information required by the application within thirty days of the change.¹⁸

Under existing law, a consumer credit reporting agency¹⁹ must provide the consumer with a free consumer credit report if requested by the consumer within thirty days of being notified of adverse action that may have been affected by the consumer's credit rating.²⁰ Chapter 651 allows the consumer sixty days to make this request.²¹

CLR

Consumer Protection; consumer credit reporting agencies

Civil Code §§ 1785.20.1, 1785.22, 1785.25, 1785.26 (new);
§§ 1785.3, 1785.10, 1785.11, 1785.13, 1785.14, 1785.15,
1785.16, 1785.17, 1785.20, 1785.31 (amended).
AB 1629 (Peace); 1992 STAT. Ch. 1194
(Effective July 1, 1993)

17. CAL. CIV. CODE § 1789.25(b) (enacted by Chapter 651). If the application requires investigation outside California, the credit services organization may be required to advance funds to pay the actual expenses. *Id.* A nonresident applying for registration must designate a resident in California as the applicant's agent for service of process. *Id.*

18. *Id.* § 1789.25(c) (enacted by Chapter 651).

19. *See id.* § 1789.12(d) (amended by Chapter 651) (defining consumer credit reporting agency).

20. *Id.* § 1785.17(a) (amended by Chapter 651).

21. *Id.*; *see* 15 U.S.C. § 1681j (1982) (requiring within 30 days the free disclosure of the report only from the bureau whose report was used to deny credit, employment, or insurance); Lucinda A. Low, Comment, *Preemption of State Credit Reporting Legislation: Toward Validation of State Authority*, 24 UCLA L. REV. 83, 118 (1977) (stating in general, the California provisions are more detailed and are often a more stringent handling of matters also regulated by the Fair Credit Reporting Act); *id.* at 99-107 (stating that States are authorized to provide greater consumer protection than the minimum standards imposed by the Fair Credit Reporting Act).

Existing state and federal law regulates consumer credit reporting agencies.¹ Existing law requires consumer credit reporting agencies² to allow consumers³ to inspect all items of information⁴ in the consumer's file⁵ upon request by the consumer.⁶ Items furnished must include the names and addresses of the sources of information and recipients of any consumer credit report.⁷ Chapter 1194 requires disclosure of all inquiries received by the agency in the six-month period preceding the consumer's request that identified the consumer in connection with credit transactions not initiated by the consumer.⁸

Under existing law, a credit agency may furnish a consumer

1. See CAL. CIV. CODE §§ 1785.1-1785.35 (West 1990 & Supp. 1992) (listing state regulations comprising the Consumer Credit Reporting Agencies Act); 15 U.S.C. §§ 1681-1681t (1982 & Supp. 1992) (listing federal regulations comprising the federal Fair Credit Reporting Act); see also *Credit Data of Arizona, Inc. v. State of Arizona*, 602 F.2d 195, 197, 198 (9th Cir. 1979) (holding that the federal Fair Credit Reporting Act permitted Arizona to go further than the federal Act did to protect consumers so long as Arizona Act was not inconsistent with federal Act); Lucinda A. Low, Comment, *Preemption of State Credit Reporting Legislation: Toward Validation of State Authority*, 24 UCLA L. REV. 83, 92, 102 (1977) (stating that the same problems which influenced the enactment of the Federal Credit Reporting Act (FCRA) have led to proposals for state legislation, and suggesting that state laws that are merely different from the FCRA should not be viewed as necessarily inconsistent and that only those laws which are less stringent than the FCRA would appear inconsistent; state laws which create additional duties should be upheld). See generally Bonnie G. Camden, *Fair Credit Reporting Act: What You Don't Know May Hurt You*, 57 U. CIN. L. REV. 267, 267, 268 (1988) (stating that keeping pace with the growth in consumer credit is the credit information industry, and reporting that TRW and Trans Union maintain files on more than 135 million consumers and that Equifax prepares 35 million reports per year and has the capacity to provide information on about 98% of United States population). Other states have also enacted credit reporting legislation; see, e.g., ARIZ. REV. STAT. ANN. §§ 44-1691 to 44-1696 (1987); COLO. REV. STAT. § 12-14.5-107 (1991); CONN. GEN. STAT. ANN. §§ 36-431 to 36-435 (West 1987 & Supp. 1992); KAN. STAT. ANN. §§ 50-701 to 50-722 (1983); MASS. GEN. LAWS ANN. ch. 93, §§ 52A-68B (West 1984); N.Y. GEN. BUS. LAW §§ 380-380-s (McKinney 1984).

2. See CAL. CIV. CODE § 1785.3(d) (amended by Chapter 1194) (defining consumer credit reporting agency as any person who regularly assembles or evaluates consumer credit information to furnish reports to third persons).

3. See *id.* § 1785.3(b) (amended by Chapter 1194) (defining consumer as a natural individual).

4. See *id.* § 1785.3(i) (amended by Chapter 1194) (defining item of information).

5. See *id.* § 1785.3(g) (amended by Chapter 1194) (defining file as any information retained on a consumer).

6. *Id.* § 1785.10(a) (amended by Chapter 1194); see 15 U.S.C. § 1631g (1988) (stating that the consumer agency must disclose the nature and substance of information in its files on a consumer).

7. CAL. CIV. CODE § 1785.10(c)-(d) (amended by Chapter 1194).

8. *Id.* § 1785.10(e) (amended by Chapter 1194).

credit report only under certain circumstances.⁹ Chapter 1194 specifies requirements for resale of credit reports, including identification of the users and the purpose of the reports.¹⁰ Chapter 1194 also provides that when there is a credit transaction¹¹ not initiated by the consumer,¹² a consumer credit reporting agency may furnish information only if it obtains the consumer's authorization, or if the proposed transaction involves a firm offer of credit¹³ to the consumer, and the consumer has not elected to have the consumer's name excluded from agency lists.¹⁴ Additionally, Chapter 1194 requires that any person who uses a consumer credit report in a credit transaction not initiated by the consumer must include a specified statement with any solicitation made to the consumer.¹⁵

9. *Id.* § 1785.11(a)(1)-(4) (amended by Chapter 1194). Circumstances include court orders, requests by consumers, for an agency intending to use the information for a credit transaction, for employment purposes, licensing purposes, hiring of a dwelling, or any other legitimate need. *Id.*

10. *Id.* § 1785.22(a)-(b) (enacted by Chapter 1194); *see id.* § 1785.22(a) (enacted by Chapter 1194) (stating that a person may not buy a consumer credit report for the purpose of reselling the report unless the person discloses to the consumer credit reporting agency the identity of the ultimate end user of the report, and the proper purpose for which the report is furnished to the end user).

11. *See id.* § 1785.11(a)(4)(A) (amended by Chapter 1194) (specifying that the transaction must be for a person the consumer credit reporting agency believes is intending to use the information in connection with a credit transaction, or for enforcing a court order for support, involving this particular consumer and involving extension of credit to the consumer, or review or collection of the consumer's account).

12. *See id.* § 1785.11(a)(1)-(2) (amended by Chapter 1194) (stating that the credit transaction not initiated by the consumer must be either in response to the order of a court having proper jurisdiction, or in compliance with a lawful subpoena issued from a court with proper jurisdiction).

13. *See id.* § 1785.3(h) (amended by Chapter 1194) (defining firm offer of credit).

14. *Id.* § 1785.11(b)(1)-(2) (amended by Chapter 1194). Reports that are disclosed because of a firm offer of credit may only contain the consumer's name, address, or information not identifiable with a particular consumer. *Id.* § 1785.11(b)(2)(A)-(B) (amended by Chapter 1194). Consumers may elect to have their names excluded from agency lists which are furnished from the credit reporting agency for purposes of reporting in connection with potential firm offers of credit. *Id.* § 1785.11(c)(1)-(2) (amended by Chapter 1194). A consumer credit reporting agency which provides a prequalifying report in connection with a credit transaction not initiated by the consumer, or an agency which maintains files on consumers on a nationwide basis, must provide a toll-free telephone number which allows the consumer to remove the consumer's name from any list. *Id.* § 1785.11(d)-(e) (amended by Chapter 1194); *see id.* § 1785.3(k) (amended by Chapter 1194) (defining prequalifying report); *see also Equifax To Create World-Class Consumer Credit Support Services*, PR NEWSWIRE ASS', July 15, 1991, available in LEXIS, Nexis Library, Current File (announcing plans by Equifax, Inc. to create a national, world-class credit service organization which will provide consumers with a toll-free phone number access to credit information consultants).

15. CAL. CIV. CODE § 1785.20.1(a) (enacted by Chapter 1194); *see id.* § 1785.20.1(a)(1)-(4) (enacted by Chapter 1194) (specifying that the statement must clearly state that the consumer's prequalifying report was used in connection with the transaction, that the consumer received the offer

DISCLOSURE OF ADVERSE CREDIT INFORMATION

Existing law specifies time limitations after which certain items of information may no longer be disclosed.¹⁶ Chapter 1194 specifies that adverse information concerning a consumer antedating the report by more than ten years may not be disclosed.¹⁷ Chapter 1194 also provides that medical information about the consumer may not be disclosed without the consumer's consent.¹⁸ However, under Chapter 1194, reports must include the consumer's failure to pay overdue child or spousal support if the report is furnished for other than employment purposes.¹⁹

Under existing law, consumer credit reporting agencies must use reasonable procedures²⁰ to furnish credit reports for only specified purposes²¹ and to follow procedures which provide maximum possible accuracy of the information in the consumer credit report.²²

of credit because the criteria for credit worthiness was met, that credit may not be extended if other criteria is not met, and that the consumer has the right to prohibit the use of the consumer's file in connection with any transaction not initiated by the consumer).

16. *Id.* § 1785.13(a)(1)-(7) (amended by Chapter 1194). Information items which may not be disclosed include bankruptcies antedating the report by more than ten years, and suits, unlawful detainers, paid tax liens, accounts placed for collection, records of arrest and any other adverse information antedating the report by more than seven years. *Id.*; see 15 U.S.C. § 1681c (1988) (stating that information that antedates the report by more than seven years, such as bankruptcies, suits, judgments, paid tax liens, account placed for collection, records of arrest, indictment or conviction of crime, may not be reported).

17. CAL. CIV. CODE § 1785.13(e) (amended by Chapter 1194).

18. *Id.* § 1785.13(g) (amended by Chapter 1194).

19. *Id.* § 1785.13(h) (amended by Chapter 1194).

20. See *id.* § 1785.14(a) (amended by Chapter 1194) (stating that reasonable procedures include identification of the user of the report and records of the purposes of the information).

21. See *supra* note 10 and accompanying text (listing circumstances when a credit report may be furnished); 15 U.S.C. § 1681q (1988) (stating that a person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined, imprisoned, or both); see also *Hiemstra v. Crocker Nat'l Bank*, 195 Cal. App. 3d 1629, 1634, 241 Cal. Rptr. 564, 567 (1987) (holding that the credit agency's practice of requiring subscribers to certify the purpose for reports in advance, and then retaining on file a copy of the one-time certification met the burden of proving that it had reasonable grounds for believing report would be used for proper purposes, and thus dissemination of information was not a violation of the California Consumer Credit Reporting Agencies Act).

22. CAL. CIV. CODE § 1785.14(a)-(b) (amended by Chapter 1194). See generally Virginia G. Maurer, *Common Law Defamation and the Fair Credit Reporting Act*, 72 GEO. L.J. 95, 133 (1983) (stating that an impediment to encouraging credit agency efficiency is the likelihood that consumers will not sue frequently enough to provide an incentive for agencies to invest in more accurate reporting).

Chapter 1194 states that no credit reporting agency may prohibit users of credit reports from disclosing the contents of the reports to the consumer if adverse action²³ may be taken by the user based on the consumer credit report.²⁴ Chapter 1194 further requires consumer credit reporting agencies to provide a written notice to businesses that regularly supply or receive information from the agencies regarding their obligations under the Consumer Credit Reporting Agencies Act.²⁵

Existing law requires disclosure of prescribed information²⁶ to the consumer upon request.²⁷ Chapter 1194 requires any disclosure of information to a consumer to include a written summary of the consumer's rights.²⁸

DISPUTED INFORMATION IN CONSUMER CREDIT REPORTS

Under existing law, consumer credit reporting agencies must investigate the completeness and accuracy of reports disputed by a consumer.²⁹ Chapter 1194 requires credit reporting agencies to rein-

23. See CAL. CIV. CODE § 1785.3(a) (amended by Chapter 1194) (defining adverse action).

24. *Id.* § 1785.14(c) (amended by Chapter 1194).

25. *Id.* § 1785.14(d) (amended by Chapter 1194); see *id.* (stating that sending copies of the California Civil Code sections of the Consumer Credit Reporting Agencies Act to businesses who regularly work with the agency will satisfy the requirement of § 1785.14(d)).

26. See *id.* § 1785.10(a)-(e) (amended by Chapter 1194) (stating that the credit reporting agency must disclose to the consumer all files maintained regarding that consumer, the names and addresses of the sources of information, the inquiries and recipients of any consumer credit report on the consumer within the preceding six-month period).

27. *Id.* § 1785.10(a) (amended by Chapter 1194); see *id.* § 1785.15(a)(1) (amended by Chapter 1194) (stating that the consumer has the right to receive a decoded version of the consumer's file explaining the codes used in the report). Information may be disclosed in person, by mail, or over the telephone with proper identification. *Id.* § 1785.15(b)(1)-(3) (amended by Chapter 1194); see *id.* § 1785.15(c) (amended by Chapter 1194) (defining proper identification as that generally deemed sufficient to identify a person).

28. *Id.* § 1785.15(f) (amended by Chapter 1194); see *id.* (providing a sample version of a written summary of rights which satisfies the requirements of § 1785.15). A consumer credit reporting agency which maintains consumer credit reports on a nationwide basis must also provide to the consumer a toll-free telephone number for the agency. *Id.* § 1785.15(f) (amended by Chapter 1194).

29. *Id.* § 1785.16(a)-(b) (amended by Chapter 1194). See generally *Francis v. Dun & Bradstreet, Inc.*, 3 Cal. App. 4th 535, 540, 4 Cal. Rptr. 2d 361, 364 (1992) (holding that a credit reporting company could not be held liable for defamation, even if statements in the credit report implied that the individual was responsible for the bankruptcies of his two prior businesses, where statements were true); James P. Nehf, *A Legislative Framework for Reducing Fraud in the Credit*

investigate and consider all relevant information with respect to the disputed information submitted by the consumer.³⁰ The credit reporting agency must also notify the consumer of any deleted information reinserted in the file, and the outcome of any disputes.³¹ Chapter 1194 provides that after information has been deleted or the consumer has filed a statement of dispute, the consumer may request that the consumer credit reporting agency notify any person who has received a consumer credit report concerning the consumer of the changes to the report.³² Information that has been deleted from a consumer's file may not be reinserted unless the person furnishing

Repair Industry, 70 N.C. L. REV. 781, 789-90 (1992) (citing one study which estimated that 40% of the consumer reports existing in credit bureau data banks contained erroneous information, and another study revealing that 33% of erroneous files contained obsolete information, 27% had incorrect credit ratings, 25% contained information not pertaining to the applicant, and 10% had conflicting information among reports supplied by the three major credit bureaus).

30. CAL. CIV. CODE § 1785.16(a)-(b) (amended by Chapter 1194); *see id.* § 1785.16(a) (amended by Chapter 1194) (stating that the credit reporting agency must reinvestigate and record the status of the disputed information within thirty business days from the time the agency received notice of the dispute); *id.* § 1785.16(a)-(b) (amended by Chapter 1194) (stating that if the consumer credit reporting agency determines that the consumer's dispute is frivolous or irrelevant, the agency must notify the consumer that it is terminating its reinvestigation of the dispute within five days after the determination is made); 15 U.S.C. § 1631i(a) (1988) (stating that if completeness or accuracy of any item is disputed by a consumer, the consumer reporting agency must reinvestigate); *see also* *Dynes v. TRW Credit Data*, 652 F.2d 35, 36 (9th Cir. 1981) (holding that a credit reporting agency failed to fulfill its statutory reinvestigation obligation when it refused to reinvestigate consumer's claim that the second credit report was inaccurate with respect to information not considered in the previous reinvestigation which found the initial credit report inaccurate); Barbara C. Sherland, *The Functions of Consumer Reporting Agencies Under the Fair Credit Reporting Act*, 59 WASH. L. REV. 401, 404 (1984) (stating that the FCRA's use of the term "reinvestigation" is a misnomer for consumer reporting agencies, because a consumer reporting agency does not perform an initial investigation but merely compiles a report from information on file from reporting creditors).

31. CAL. CIV. CODE § 1785.16(c)-(g) (amended by Chapter 1194); *see* 15 U.S.C. § 1631i(b) (1988) (stating that after reinvestigation, if the dispute is unresolved, the consumer may file a brief statement); *see also* CAL. CIV. CODE § 1785.16(c) (amended by Chapter 1194) (specifying that after information has been deleted from a consumer's file, it may not be reinserted unless the person who furnishes the information verifies that the information is correct). Notification of the results of the investigation must include a notice to the consumer stating that the consumer may request a description of the procedure used to determine the accuracy of the file, that the consumer may add a statement to the file disputing its accuracy or completeness, and that the consumer may request notices of deletion to anyone specified by the consumer. *Id.* § 1785.16(d) (amended by Chapter 1194).

32. CAL. CIV. CODE § 1785.16(h) (amended by Chapter 1194). This notification should be furnished to any person receiving the credit report in the last two years regarding the consumer for employment purposes, and any person receiving the credit report within the last six months for any other purpose. *Id.*

the information notifies the consumer credit reporting agency that the information is accurate.³³

Existing law provides specific situations in which users of credit reports must notify consumers of actions taken because of information in the credit report.³⁴ Chapter 1194 limits this notification to situations in which adverse actions are taken.³⁵

OBLIGATIONS OF FURNISHERS OF CREDIT INFORMATION

Existing law imposes obligations on credit reporting agencies regarding the accuracy and completeness of reports.³⁶ Chapter 1194 imposes obligations on furnishers of credit information to credit reporting agencies, and provides that a person may not furnish information on a specific transaction or experience to a credit reporting agency if the person knows or should know the information is incomplete or inaccurate.³⁷ A furnisher of credit information must also investigate disputed information and report the results to the credit reporting agency within thirty business days from the date the credit reporting agency receives notice from the consumer of disputed information, corrections, closure of accounts, or delinquent accounts.³⁸ Chapter 1194 provides that if information on a specific transaction or experience is in dispute between the person who furnishes the information to a consumer credit reporting agency and the consumer, the furnisher of information may not report the disputed information without also including a notice that the information is disputed by the consumer.³⁹ A creditor⁴⁰ must also notify the con-

33. *Id.* § 1785.16(c) (amended by Chapter 1194).

34. *Id.* § 1785.20(a)-(b) (amended by Chapter 1194).

35. *Id.* § 1785.20(a)(1)-(3) (amended by Chapter 1194). This notice must include the consumer's right to obtain a copy of the report and to dispute the accuracy or completeness of the report. *Id.* § 1785.20(a)(4)(A)-(B) (amended by Chapter 1194).

36. *Id.* § 1785.16 (amended by Chapter 1194); *see supra* note 30 and accompanying text (stating certain obligations of the consumer credit reporting agency).

37. CAL. CIV. CODE § 1785.25(a) (enacted by Chapter 1194).

38. *Id.* § 1785.25(f) (enacted by Chapter 1194); *see id.* § 1785.25(g) (enacted by Chapter 1194) (stating that a person who furnishes information to a consumer credit reporting agency is liable for failure to comply with § 1785.25(g) unless the furnisher can establish by a preponderance of the evidence that the furnisher maintained reasonable procedures in order to comply with the provisions).

39. *Id.* § 1785.25(c) (enacted by Chapter 1194).

40. *Id.* § 1785.26(a)(1) (enacted by Chapter 1194) (defining creditor).

sumer before submitting negative credit information⁴¹ to a credit reporting agency.⁴²

This act is operative on July 1, 1993, and the changes will not affect information in a credit application that is furnished prior to July 1, 1993.⁴³

CLR

Consumer Protection; fundraising solicitation--disclosures

Business and Professions Code § 17510.85 (new);
Government Code § 17510.8 (new); § 12599 (amended).
SB 1682 (Boatwright); 1992 STAT. Ch. 511
AB 3053 (Polanco); 1992 STAT. Ch. 1100

Under prior law, a commercial fundraiser for charitable purposes¹ was not required to disclose to a person solicited for a contribution the percentage of total fundraising expenses.² Chapter

41. See *id.* § 1785.26(a)(2) (enacted by Chapter 1194) (defining negative credit information as information concerning the credit history of a consumer that, because of the consumer's past delinquencies, late or irregular payment history, insolvency, or any form of default, would reasonably be expected to affect adversely the consumer's ability to obtain or maintain credit).

42. *Id.* § 1785.26(b) (enacted by Chapter 1194); *cf.* UTAH CODE ANN. § 70C-7-107(2) (1990) (requiring a creditor to notify the consumer before submitting a negative credit report to a credit reporting agency); *id.* § 70C-7-107(1)(c)(i) (1990) (defining negative credit report as information which would reasonably be expected to adversely affect the party's ability to obtain or maintain credit).

43. 1992 Cal. Stat. ch. 1194, sec. 13, at ____.

1. See CAL. GOV'T CODE § 12599 (amended by Chapter 511) (defining a commercial fundraiser for charitable purposes as including any individual, corporation, or other legal entity who, for compensation, solicits funds, assets, or property for a charitable purpose, or who obtains a majority of its inventory by purchase, receipt, or control of donated personal property). Section 12599 excludes from the definition of a commercial fundraiser for charitable purposes any federally insured financial institution in which solicited funds may be deposited. *Id.*

2. 1991 Cal. Stat. ch. 1150, sec. 2, at 4795 (amending CAL. GOV'T CODE § 12599). See generally CAL. GOV'T CODE §§ 12580-12599.5 (West 1980 & Supp. 1992) (providing the Uniform Supervision of Trustees for Charitable Purposes Act); see *infra*, note 10 and accompanying text (enumerating required documents and their contents to be reported by commercial fundraisers to the Attorney General).

511 requires that a commercial fundraiser disclose to a prospective contributor particular information relating to fundraising expenses within a prescribed period of time.³ Under Chapter 511, a commercial fundraiser failing to comply with the disclosure requirements will be enjoined from further solicitation in California.⁴

Under existing law, prior to any solicitation or sales⁵ solicitation for charitable purposes,⁶ the solicitor must exhibit to a person solicited a Solicitation or Sale for Charitable Purposes Card.⁷ Chapter 511 provides that any individual, corporation, or other legal entity which solicits funds for charitable purposes must disclose that the solicitation is being conducted by a commercial fundraiser⁸ and must provide the name of the commercial fundraiser.⁹

3. CAL. GOV'T CODE § 12599(h) (amended by Chapter 511); *see id.* § 12590 (West 1980) (granting public access to the Attorney General's register and other related materials, including instruments and reports filed with the Attorney General's office, but excluding from that accessible to the public any instrument not pertaining solely to charitable purposes).

4. *Id.* § 12599(f) (amended by Chapter 511); *see id.* § 12598 (West Supp. 1992) (reposing in the Attorney General the responsibility of enforcing provisions of the Uniform Supervision of Trustees for Charitable Purposes Act); *id.* § 12591 (West 1980) (enumerating the proceedings that may be employed by the Attorney General to enforce provisions of the Uniform Supervision of Trustees for Charitable Purposes Act); *id.* § 12596 (West 1980) (prescribing a statute of limitations period of ten years from the time of the accrual of an action involving property in trust for charitable purposes or against a charitable corporation); *id.* § 12599.5 (West Supp. 1992) (requiring commercial fundraisers to register and submit a deposit or bond in the amount of \$25,000 which shall be in favor of the State of California and be used for the benefit of any personal damaged as a result of the misconduct of the commercial fundraiser).

5. *See* CAL. BUS. & PROF. CODE § 17510.1 (West 1990) (defining sales).

6. *See id.* § 17510.2(a)(1)-(3) (West 1990) (defining solicitation for charitable purposes as any request to give money or property where the name of a charity is used as an inducement to make the donation or where a representation is made that the donation will be used for charitable purposes).

7. *Id.* § 17510.3(a) (West Supp. 1992). The card must provide the name and address of the soliciting organization or the individual solicitor. *Id.* In lieu of a solicitation card, the solicitor may present any written material which complies with the standards set forth. *Id.* § 17510.3(a)(1)-(9) (West Supp. 1992).

8. *See* CAL. GOV'T CODE § 12599(a)(1)-(2) (amended by Chapter 511) (defining commercial fundraisers for charitable purposes). Commercial fundraisers are required to file an annual financial report with the Attorney General's Registry of Charitable Trusts as well as the sheriff of each county in which the fundraiser intends to operate. *Id.* § 12599(c), (d) (amended by Chapter 511). Fundraisers that obtain a majority of their inventory of salvageable personal property for sale to the public from an authorized organization are only required to file an annual financial report with the Attorney General's Registry of Charitable Trusts. *Id.* § 12599(e) (amended by Chapter 511).

9. CAL. BUS. & PROF. CODE § 17510.85 (enacted by Chapter 511); *see id.* (providing that the disclosure must be made prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, or telephone, or at the same time as a written solicitation).

Under existing law, commercial fundraisers for charitable purposes are required to register with the Attorney General and to provide particular financial information, prior to engaging in charitable solicitations.¹⁰ Chapter 1100 requires that where any charitable organization collects more than a particular amount,¹¹ more than twenty-five percent of which is spent on nonprogram activities,¹² the charity shall, in addition to other registration requirements,¹³ submit in a report to the Attorney General particular itemized expenses as well as other information relating to total contributions received.¹⁴ Chapter 1100 further provides for public review of these reports¹⁵ and distribution of these reports.¹⁶

COMMENT

Prior to passage of Chapter 511, state laws governing operations of solicitors for charitable purposes¹⁷ were subject to abuse.¹⁸

10. CAL. GOV'T CODE § 12584 (West 1980) (requiring that the Attorney General maintain a register of charitable corporations subject to the Uniform Supervision of Trustees for Charitable Purposes Act, enumerating sources for information to be contained within the register, and permitting the Attorney General to conduct investigations pursuant to maintenance of the register); *id.* § 12586 (West 1980) (prescribing information to be provided to the Attorney General); *id.* § 12599(d) (amended by Chapter 511) (applying the reporting requirements and procedures contained in Government Code § 12586 to commercial fundraisers). *See generally id.* §§ 12580-12599.5 (West 1980 & Supp. 1992) (providing the Uniform Supervision of Trustees for Charitable Purposes Act).

11. *See* CAL. BUS. & PROF. CODE § 17510.8 (enacted by Chapter 1100) (specifying the amount as fifty percent of its annual income and more than one million dollars).

12. *See id.* § 17510.8(b)(2) (enacted by Chapter 1100) (defining as nonprogram expenditures salaries of employees, fundraising, travel expenses, and overhead and other expenses related to the management and administration of the charity).

13. *See supra*, note 10 and accompanying text (enumerating reporting requirements under the Uniform Supervision of Trustees for Charitable Purposes Act).

14. CAL. BUS. & PROF. CODE § 17510.8 (enacted by Chapter 1100). In addition to reporting of nonprogram expenses, the charitable organization is required to report the total amount of revenue and charitable contributions. *Id.* § 17510.8(b)(2)-(3) (enacted by Chapter 1100); *see supra*, note 12 (defining nonprogram expenditures).

15. *See id.* § 17510.8(d) (enacted by Chapter 1100) (granting public review in accordance with reporting provisions of the Uniform Supervision of Trustees for Charitable Purposes Act).

16. *Id.* § 17510.8(c) (added by Chapter 1100) (requiring that a charity shall distribute upon written or oral request by any person a copy of the report required under § 17510.8(a)).

17. *See id.* §§ 12580-12599.5 (West 1980 & Supp. 1992) (providing the Uniform Supervision of Trustees for Charitable Purposes Act).

Additionally, there were some doubts as to the constitutionality of provisions of the Uniform Supervision of Trustees for Charitable Purposes Act,¹⁹ intended to curb many of these abuses.²⁰ A number of states, similarly concerned by the activities of professional fundraising firms and charitable organizations, have enacted or proposed legislation to regulate the activities of charitable organizations and fundraising firms.²¹

Despite considerable efforts to curb abuses and avoid constitutionally suspect results, some regulations in this area have been

18. CHARITABLE SOLICITATIONS - PROFESSIONAL COMMERCIAL FUNDRAISERS, NOTES OF THE SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1682, at 2-3 (March 31, 1992) [hereinafter ANALYSIS OF SB 1682]; CHARITABLE SOLICITATIONS - DISCLOSURE OF COMMERCIAL FUNDRAISING EXPENSES UPON REQUEST, NOTES OF THE SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 3066, at 2-3 (June 9, 1992). [hereinafter ANALYSIS OF AB 3066]; CHARITABLE SOLICITATIONS - REPORTING OF ADMINISTRATIVE EXPENSES TO ATTORNEY GENERAL - DISCLOSURE AT TIME OF SOLICITATION OF AVAILABILITY OF REPORTED EXPENSE INFORMATION FROM ATTORNEY GENERAL, NOTES OF THE SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 3053, at 2-3 (June 30, 1992) [hereinafter ANALYSIS OF AB 3053]. Testimony was proffered before the Senate Committee about the rampant use of misleading and dishonest tactics employed by professional fundraising firms, netting contributions statewide of tens of millions of dollars from which, in some instances, less than sixteen cents on every dollar collected was disbursed to the charitable organizations. ANALYSIS OF SB 1682, *supra*, at 2. According to a cited Attorney General's Report on Charitable Solicitation by Commercial Fundraisers, of \$13.8 million raised, approximately 6.7 percent, less than one million dollars, was turned over to charity. ANALYSIS OF AB 3066, *supra*, at 2. This legislation was intended to prevent excessive compensation of management, such as occurred with United Way officers. ANALYSIS OF AB 3053, *supra*, at 3; see Frank Perrotta, 'Deceptive' Fund-raising Halted, THE BOSTON GLOBE, Nov. 1, 1991, at 72; Lynn Simross, *Feel Generous? Charity Begins With Homework*, L.A. TIMES, Apr. 5, 1992, at E5 (discussing the general practices of fundraisers that retain significant portions of contributions, and providing consumer tips to prospective contributors).

19. See CAL. GOV'T CODE §§ 12580-12599.5 (West 1980 & Supp. 1992) (promulgating the Uniform Supervision of Trustees for Charitable Purposes Act (USTCP)).

20. ANALYSIS OF SB 1682, *supra* note 18, at 2; ANALYSIS OF AB 3053, *supra* note 18, at 2; ANALYSIS OF AB 3066, *supra* note 18, at 1 (expressing reservations, in light of the Supreme Court's decision in *Riley*, as to the constitutionality of current laws designed to stem abuses involving charities and solicitations).

21. See 1992 Ariz. Legis. Serv. 194 (West) (enacting ARIZ. REV. STAT. ANN. § 44-6551) (regulating the solicitation of funds by charitable organizations); 1992 Colo. Legis. Serv. 92-1053 (West) (enacting COLO. REV. STAT. § 6-16-104.5) (requiring particular reporting relating to taxation by charitable organizations); 1992 Ky. Acts 457 (enacting KY. REV. STAT. §§ 367.650-367.670) (requiring a person acting as a professional fundraiser to register annually with the Attorney General). For similar legislation pending in other states, see, 1992 Alaska House Bill 590; 1992 Maryland House Bill 1349; 1992 Massachusetts House Bill 2593; 1992 Minnesota House Bill 2956; 1992 South Carolina House Bill 4733; 1992 Washington House Bill 2637.

struck down in recent Supreme Court decisions.²² For example, in *Secretary of State of Maryland v. Joseph H. Munson Co.*,²³ the United States Supreme Court held that where a statute restricted the amount of money that could be spent on fundraising activity, it risked "chilling free speech" and was "properly subject to facial attack."²⁴ The Maryland law being reviewed required that a charitable organization limit its fundraising expenses to less than twenty-five percent (25%) of those funds collected.²⁵ The Court concluded that the Maryland law would likely restrict First Amendment activity while doing little if anything to achieve the state's goals of preventing fraud.²⁶

More recently, the United States Supreme Court in *Riley v. National Fed'n of the Blind of North Carolina, Inc.*²⁷ held provisions of North Carolina's Charitable Solicitations Act to be unconstitutionally violative of freedom of speech under the First Amendment.²⁸ The North Carolina Act attempted to prohibit professional fundraisers from retaining "excessive" fees.²⁹ Additionally, the Act required the possession of an approved license and

22. See *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984) (discussed, *infra*, at notes 23-26 and accompanying text); *Riley v. National Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988) (discussed *infra*, at notes 27-34 and accompanying text).

23. 467 U.S. 947 (1984).

24. *Id.* at 968. The Court found "chilling" the statutes' requirement that an official grant a license before a charitable fundraiser could disseminate ideas. *Id.* at 964 n.12. This conclusion was consistent with and compelled by previous decisions of the Supreme Court. *Id.* (citing *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940); *Schneider v. State*, 308 U.S. 147 (1939); *Lovell v. Griffin*, 303 U.S. 444, 451 (1938)). The Supreme Court in *Thornhill* enunciated the ills borne in the restriction of unfettered speech, stating: "The safeguarding of these rights to the ends that men may speak as they think on matters vital to them . . . is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas . . ." *Thornhill*, 310 U.S. at 95.

25. *Munson*, 467 U.S. at 950, n.2; see MD. ANN. CODE art. 41, § 103A (1982).

26. *Munson*, 467 U.S. at 965-67.

27. 487 U.S. 781 (1988).

28. *Id.* at 784. The Court held that North Carolina's law imposing particular fees on professional fundraisers might have the effect of driving fundraisers out of North Carolina or discourage them from representing certain smaller or less popular charities, either of which would have the effect of creating an unconstitutional burden upon freedom of speech. *Id.* at 794.

29. *Id.* at 794; see N.C. GEN. STAT. § 131C-1 (1986) (promulgating the Charitable Solicitations Act).

particular disclosures of a professional fundraiser prior to solicitation.³⁰ The Court reasoned that this Act might unreasonably burden a charity's or fundraiser's freedom of speech, either by "creating a chill" discouraging unfettered speech or by prescribing content, in either instance impermissibly vexing protected freedom of speech.³¹ The Court did leave room for statutes designed to prevent fraudulent conduct;³² however, it found no tenable relationship between the percentage of funds retained by the fundraiser and the incidence of fraud.³³ Additionally, the Court found constitutionally permissible particular financial disclosures by professional fundraisers to the state.³⁴

Chapter 511 appears to have been sufficiently well drafted to avoid many of the constitutional obstacles of their North Carolina and Maryland counterparts.³⁵ However, given the Court's concern for

30. *Riley*, 487 U.S. at 786-87. The Court observed that a prior North Carolina licensing provision required that applications for licenses be submitted prior to soliciting by professional or volunteer solicitors, but the Act in question required the possession of licenses only by the former. *Id.*; see N.C. GEN. STAT. § 131C-6 (1986) (requiring licenses of professional fund-raising counsel and solicitors); *id.* § 16.1 (repealed by 1989 N.C. SESS. LAWS 566) (requiring a professional solicitor prior to any solicitation to disclose the names of the professional solicitor and the person soliciting).

31. *Riley*, 487 U.S. at 795-98. The Court was additionally concerned with the Act's requirement that particular information be contained in the solicitations of the fundraisers, this effecting content-based burdens upon the First Amendment. *Id.* at 797.

32. See *id.* at 795 (indicating that such antifraud laws as North Carolina had would pass constitutional scrutiny). The Court further indicated that the state might require reporting by the fundraiser of particular financial information. *Id.*

33. *Id.* at 793, 795 (holding that a determination of "reasonableness" based on percentages of funds retained would place an impermissible burden on fundraisers to validate fees, and might subject them to mistaken adverse findings). The Court was sensitive to the inconsistent results that might be achieved, given a similar fee imposed, where, in one instance, the amount collected was small and the percentage of funds therefore high and, in a second instance, the amount collected large and the resulting percentage much smaller; the result of this method of determination would be to unfairly prejudice smaller charities. *Id.* at 793.

34. *Id.* Additionally, the Court viewed as constitutionally permissible a requirement that a fundraiser disclose his or her professional status. *Id.* at 793, 795, 800, n.11; see *supra* note 20 and accompanying text (concerning unconstitutional content-based regulations).

35. See ANALYSIS OF SB 1682, *supra* note 18, at 3; ANALYSIS OF SB 3066, *supra* note 18, at 4 (submitting that the bills should pass constitutional scrutiny, in light of *Riley*, where they were so drafted as to limit any burdens on free speech while clearly expressing the compelling state interests in regulating charitable fundraising activities).

the chilling effects of legislation on freedom of speech, Chapter 511 may expect rigorous constitutional scrutiny.

SEA

Consumer Protection; incentives offered as part of advertising plans

Business and Professions Code § 17537.2 (amended).
SB 1678 (Killea); 1992 STAT. Ch. 179

Existing law provides that certain forms of advertising are deemed deceptive¹ and constitute unfair trade practices.² Under existing law, an advertising incentive³ requesting the recipient of the incentive to pay money or purchase any article or product⁴ in order to receive the benefits of the incentive is deceptive and constitutes unfair trade practices.⁵ This prohibition does not apply where the incentive offers a free stay at a hotel or resort, provided that the accommodations offered in the incentive are located on the property offered for sale.⁶ Chapter 179 expands this exception by allowing the

1. See BLACK'S LAW DICTIONARY 406 (6th ed.) (1990) (defining deceptive advertising as any advertising which contains any assertion, representation, or statement of fact which is untrue or misleading).

2. CAL. BUS. & PROF. CODE § 17537.2 (amended by Chapter 179); see *id.* § 17200 (West 1987) (defining unfair competition); 15 U.S.C. §§ 41, 45 (1982) (prohibiting unfair or deceptive acts or practices in commerce); see also *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'r*, 447 U.S. 557, 563 (1980) (holding that the government may ban forms of communication more likely to deceive the public than to inform it); *id.* at 566 (providing that for commercial speech to come within the protection of the First Amendment it must concern lawful activity and not be misleading). Several states have restricted advertising, requiring that it not intentionally deceive the public; see, e.g., ARK. CODE ANN. § 5-37-515 (Michie 1992) (prohibiting false, fraudulent, and misleading advertising, and prescribing penalties for persons creating such advertising); IDAHO CODE § 48-402 (1992) (stating that selling certain items of merchandise below cost in order to attract patronage is a deceptive form of advertising, and is therefore unlawful); LA. REV. STAT. ANN. § 22:775 (West 1992) (providing that misrepresentations and false advertising are unlawful); MISS. CODE ANN. § 75-24-5 (1991) (listing various business practices which constitute unfair methods of competition and advertising); N.Y. PENAL LAW § 190.20 (Consol. 1992) (providing that a false or misleading statement in any advertisement intentionally made to increase consumption of property or services is a misdemeanor).

3. See CAL. BUS. & PROF. CODE § 17537.1(a) (West Supp. 1992) (defining incentive).

4. See *id.* § 17024 (West 1987) (defining article or product).

5. *Id.* § 17537.2(a) (amended by Chapter 179).

6. *Id.* § 17537.2(f) (amended by Chapter 179).

property offered for sale in the incentive to be within a twenty mile radius of the accommodations to be occupied by the recipient.⁷ Chapter 179 further provides that the offer must inform the recipient that the recipient is responsible for payment of any government-imposed taxes directly related to the services being provided, and for any personal expenses incurred.⁸

JME

Consumer Protection; vehicle rentals

Civil Code § 1936 (amended).
SB 1759 (Beverly); 1992 STAT. Ch. 1184

Under existing law, a vehicle rental company¹ and a renter² may agree that the renter will be liable for the theft of a rental passenger vehicle.³ Prior law provided that, absent an agreement to the contrary, a renter was presumed not to be liable for a theft if certain conditions were met.⁴ The rental company could rebut the

7. *Id.* § 17537.2(f)(3) (amended by Chapter 179). Where the incentive constitutes an opportunity to stay at a hotel or resort accommodation, both the fee to utilize the incentive and any requirement to attend a sales presentation must be prominently displayed on the incentive. *Id.* § 17537.2(f)(1) (amended by Chapter 179).

8. *Id.* § 17537.2(f)(2) (amended by Chapter 179). Chapter 179 further provides that if the incentive is offered in conjunction with any additional incentive, the offer of such additional incentives must comply with Business and Professions Code § 17537.1 and must conspicuously state the fee and additional requirements, if any, to use the additional incentives. *Id.* § 17537(f)(4) (amended by Chapter 179).

1. *See* CAL. CIV. CODE § 1936(a)(1) (amended by Chapter 1184) (defining rental company as a person or entity that rents passenger vehicles to the public).

2. *See id.* § 1936(a)(2) (amended by Chapter 1184) (defining renter as a person who is obligated under a contract to lease or hire a passenger vehicle from a rental company for less than thirty days).

3. *Id.* § 1936(b) (amended by Chapter 1184); *see id.* § 1936(a)(7) (amended by Chapter 1184) (defining passenger vehicle). *See generally* Review of Selected 1988 California Legislation, 20 PAC. L.J. 503 (1989) (discussing the 1988 inaction of Civil Code § 1936).

4. 1988 Cal. Stat. ch. 1523, sec. 1, at 544 (enacting CAL. CIV. CODE § 1936(b)(2)). A renter was presumed to have no liability if the renter: (1) Had possession of the ignition key or establishes that the key was not in the car at the time the car was stolen; (2) filed an official report with the

presumption of nonliability by proving that the renter committed or aided in the theft of the vehicle.⁵ Chapter 1184 provides that the renter may agree that the renter will only be liable for loss due to theft if the rental company can establish by clear and convincing evidence that the renter failed to exercise ordinary care⁶ while in possession of the vehicle.⁷

Existing law provides that a rental company may provide in a rental contract that a damage waiver⁸ does not apply under specified circumstances.⁹ Chapter 1184 provides that no damage waiver shall apply to the loss due to the theft of the vehicle.¹⁰

DCHIV

appropriate law enforcement agency within twenty-four hours of learning of the theft; and (3) the renter reasonably cooperated with the rental company and police. *Id.* Existing law limits the total liability of one who rents an automobile to certain costs incurred as a result of collision or theft of the automobile. CAL. CIV. CODE §§ 1936(b)(1)-(7), 1936(c)(1)-(7) (amended by Chapter 1184). *See generally* Michel Marriott, *So Your Rental Car is Stolen*, CHI. TRIB., Nov. 24, 1991, at 11 (discussing theft of rental cars and the recent increase of such thefts).

5. 1988 Cal. Stat. ch. 1523, sec. 1, at 544 (enacting CAL. CIV. CODE § 1936(b)(2)).

6. *See* 6 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* § 750 (1988) (defining ordinary care of a reasonable person); *Beck v. Sirota*, 42 Cal. App. 2d 551, 557, 109 P.2d 419, 422 (1941) (holding that the amount of care of a reasonable person must exercise an amount of care in proportion to the danger avoided and the consequences reasonably anticipated); *Tucker v. Lombardo*, 47 Cal. 2d 457, 464, 303 P.2d 1041, 1045 (1956) (providing that the defendant was required to exercise a degree of care commensurate with, and in proportion to, the danger involved).

7. CAL. CIV. CODE § 1936(b)(2) (amended by Chapter 1184); *see* ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE, SUBCOMMITTEE ANALYSIS ON SB 1759, at 1-2 (June 16, 1992) (providing that the amendments to § 1936 are in response to evidence that there may have been an increase in renters who steal or conspire to steal rental vehicles); *cf.* OHIO REV. CODE ANN. § 4549.65(B) (Baldwin 1992) (providing that a rental company will not be liable for damages sustained by a lessee as a result of being stopped, detained, arrested, or charged in connection with auto theft if the rental company reasonably believes that the vehicle was being stolen or the renter did not return the vehicle within twenty-four hours of the time specified by the agreement); TEX. REV. CIV. STAT. ANN. art. 9026 (West 1991) (providing that the rental company may only exclude theft from a damage waiver clause of a rental contract in limited situations).

8. *See* CAL. CIV. CODE § 1936(a)(4) (amended by Chapter 1184) (defining damage waiver as an agreement not to hold the renter liable for damage or loss related to the rental of the vehicle or to the vehicle itself).

9. *Id.* § 1936(f)(1)-(3) (amended by Chapter 1184); *see id.* (providing the specific circumstances in which a rental company may limit the application of the damage waiver).

10. *Id.* § 1936(g) (amended by Chapter 1184). Chapter 1184 additionally provides that a rental company must bring such an action in the county in which the renter resides or, if the renter is not a resident of the state, in the jurisdiction in which the renter resides. *Id.* § 1936(o) (amended by Chapter 1184).