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# Commercial Transactions

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# Commercial Transactions

## Commercial Transactions; delivery time requirements

Civil Code § 1722 (amended).  
SB 1968 (Lockyer); 1990 STAT. Ch. 193

Under existing law, cable television companies, utility companies, and retailers with twenty-five or more employees must specify to consumers a four hour period when the delivery of merchandise or connection or repair of services will be made.<sup>1</sup> Under Chapter 193, any provision of a delivery or services contract<sup>2</sup> that modifies or waives a consumer's delivery right is void as against public policy.<sup>3</sup>

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1. CAL. CIV. CODE §§ 1722(a)(1)-(2), 1722(b)(1)-(2), 1722(c)(1)-(2) (amended by Chapter 193). A four-hour delivery or service period must only be specified if the presence of the consumer is required. *Id.* §§ 1722(a)(1), 1722(b)(1), 1722(c)(1) (amended by Chapter 193). If no unforeseen or unavoidable circumstance occurs, any failure to deliver or perform during the specified period may be grounds for a suit brought by the consumer in small claims court for lost wages and expenses up to \$500. *Id.* §§ 1722(a)(2), 1722(b)(2), 1722(c)(2) (amended by Chapter 193). *See* CAL. CIV. PROC. CODE § 116.2 (West Supp. 1990) (jurisdiction of small claims court). *See generally* *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 331, 394 (1990) (review of California Civil Code section 1722).

2. *See* CAL. CIV. CODE § 1791(o) (West Supp. 1990) (definition of services contract).

3. *Id.* § 1722(d) (amended by Chapter 193).

## Commercial Transactions; electronic funds transfers

Commercial Code §§ 11101, 11102, 11103, 11104, 11105, 11106, 11107, 11108, 11201, 11202, 11203, 11204, 11205, 11206, 11207, 11208, 11209, 11210, 11211, 11212, 11301, 11302, 11303, 11304, 11305, 11401, 11402, 11403, 11404, 11405, 11406, 11501, 11502, 11503, 11504, 11505, 11506, 11507 (new); § 1105 (amended).

SB 1759 (Beverly); 1990 STAT. Ch. 125

Sponsor: California Commission on Uniform State Laws

Support: California Bankers Association, California Bankers Clearing House Association, National Conference for Uniform State Laws

Existing law sets forth the rights and obligations of parties that make payments by check or draft.<sup>1</sup> Chapter 125 sets forth comprehensive provisions governing electronic funds transfers.<sup>2</sup>

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1. See CAL. COM. CODE §§ 4101-4501 (West 1964 & Supp. 1990). See generally Ballen, *The Need for Article 4A*, 45 BUS. LAW. 1399 (1990) (discussing the need for a comprehensive body of law governing wholesale wire transfers); Esposito, *What Regulates Corporate Electronic Funds Transfers?*, 13 SETON HALL LEGIS. J. 75, 92-94 (1989) (discussing reasons for adding an article to the Uniform Commercial Code rather than rewriting existing commercial paper or banking articles).

2. CAL. COM. CODE §§ 11101-11507 (enacted by Chapter 125). Chapter 125 does not apply to any funds transfers that are governed by federal regulation under the Electronic Fund Transfer Act of 1978 (EFTA). *Id.* § 11108 (enacted by Chapter 125). See CAL. COM. CODE § 11104(a) (enacted by Chapter 125) (definition of funds transfer). *Cf.* 15 U.S.C. § 1693a(6) (1988) (definition of electronic funds transfer); *id.* §§ 1693-1693r (federal consumer protection for electronic funds transfers); U.C.C. § 4A-104 comment 2 (1990) (U.C.C. provisions identical to Chapter 125 that apply to any payment order made within the banking system); *id.* § 4A-104(a)(1)(iii) comment 5 (U.C.C. provisions identical to Chapter 125 that do not apply to payments made by check or credit card). See generally Ballen, *Beyond Enactment of Article 4A: The Next Step*, 45 BUS. LAW. 1509 (1990) (discussing the rules that funds transfer systems may wish to adopt in light of U.C.C. article 4A); Baxter, *The Interrelationship of Article 4A With Other Law*, 45 BUS. LAW. 1485 (1990) (examining points of contact between U.C.C. article 4A and eleven other bodies of law); Fry, *Basic Concepts in Article 4A: Scope and Definitions*, 45 BUS. LAW. 1401 (1990) (discussing the scope of U.C.C. article 4A and describing the transactions governed by article 4A); Goldstein, *Federal Versus State Adoption of Article 4A*, 45 BUS. LAW. 1513 (1990) (arguing for federal rather than state adoption of U.C.C. article 4A); Esposito, *supra* note 1, at 79 (EFTA covers electronic funds transfers between consumers and financial institutions); *id.* at 75-78 (overview of corporate electronic funds transfers).

Under Chapter 125, where an agreed-upon security procedure<sup>3</sup> is employed, a receiving bank<sup>4</sup> may not enforce or retain payment of an unauthorized payment order<sup>5</sup> if the customer<sup>6</sup> did not directly or indirectly cause the order.<sup>7</sup> If an accepted<sup>8</sup> payment

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3. See CAL. COM. CODE § 11201 (enacted by Chapter 125) (definition of security procedure). See also *id.* §§ 11202(b) (enacted by Chapter 125) (criteria for determining validity of an order received by a bank under a security procedure); 11202(c) (enacted by Chapter 125) (criteria for determining commercial reasonableness of a security procedure). See generally French, *Unauthorized and Erroneous Payment Orders*, 45 BUS. LAW. 1425, 1426 (1990) (discussing the significance and definition of security procedure); *id.* at 1431 (listing four factors to be considered in determining the commercial reasonableness of a security procedure). Cf. U.C.C. §§ 4A-203 comment 4 (1990) (principal issue in litigation likely to be the commercial reasonableness of the security procedure); 4A-201 comment (definition of security procedure does not apply to procedures a bank may follow unilaterally in processing payment orders).

4. See CAL. COM. CODE § 11103(a)(4) (enacted by Chapter 125) (definition of receiving bank). See also Fry, *supra* note 2, at 1412 (the receiving bank is the bank to which an instruction is addressed). Cf. U.C.C. § 4A-105 comment 1 (1990) (definition of bank includes some noncommercial banks and Federal Reserve Banks).

5. See CAL. COM. CODE § 11103(a)(1) (enacted by Chapter 125) (definition of payment order). See also Baxter, *Proper and Improper Execution of Payment Orders*, 45 BUS. LAW. 1447, 1448 (1990) (explaining payment orders as one of two key concepts in an electronic funds transfer); French, *supra* note 3, at 1428 (explaining unauthorized payment orders). Cf. 15 U.S.C. § 1693a(11) (1988) (definition of unauthorized electronic fund transfer).

6. See CAL. COM. CODE § 11105(a)(3) (enacted by Chapter 125) (definition of customer). See also Fry, *supra* note 2, at 1412 (describing the parties to a funds transfer).

7. CAL. COM. CODE § 11203(a)(2) (enacted by Chapter 125). The payment order must not be caused by a person entrusted to act for the customer or by a person who breached the security procedure by some means controlled by the customer without authority from the receiving bank. *Id.* A receiving bank may, by express written agreement, limit the extent that the bank is entitled to enforce or retain payment of the payment order. *Id.* § 11203(a)(1) (enacted by Chapter 125). If an unauthorized payment order was not caused by the customer, the bank must refund any payment of the payment order plus interest to the customer. *Id.* § 11204(a) (enacted by Chapter 125). A customer is not entitled to any interest if the customer fails to notify the bank within a reasonable time that the order was not authorized. *Id.* See generally French, *supra* note 3, at 1429 (the receiving bank generally bears the risk of loss when the security procedure is not followed). Cf. U.C.C. § 4A-203 comment 1 (1990) (receiving bank may suffer loss unless the receiving bank is entitled to enforce payment of the payment order accepted); *id.* comment 5 (effect is to place the risk of loss from fraud onto the customer); *id.* § 4A-204 comment 2 (section 204(a) designed to encourage prompt customer notification to the bank of the unauthorized payment).

8. See CAL. COM. CODE § 11209 (enacted by Chapter 125) (provisions governing acceptance of a payment order). See also *id.* § 11212 (enacted by Chapter 125) (liability of a receiving bank for failing to accept a payment order that the bank was obligated to accept). See generally Ballen, *Duties of the Beneficiary's Bank*, 45 BUS. LAW. 1467 (1990) (demonstrating acceptance of a payment); Fry, *supra* note 2, at 1413 (describing acceptance and execution of payment orders); Esposito, *supra* note 1, at 95-97 (acceptance creates rights and obligations between the parties).

order is erroneously transmitted<sup>9</sup> under an error detection security procedure, the sender<sup>10</sup> is obliged to pay the receiving bank for the order.<sup>11</sup> However, if a sender proves that the error would have been detected if the receiving bank had not also failed to comply with the security procedure, the sender is not obliged to pay.<sup>12</sup>

When a payment order using a name and number identifies different beneficiaries, the beneficiary's bank<sup>13</sup> may rely on the number if that bank does not know<sup>14</sup> of the discrepancy.<sup>15</sup> Under Chapter 125, if the beneficiary's bank pays the person identified by number and the originator<sup>16</sup> of the payment order is a bank,<sup>17</sup> the

9. See CAL. COM. CODE § 11205(a)(i)-(iii) (enacted by Chapter 125) (three types of erroneous transmissions are payment to a beneficiary not intended by the sender, an error in the amount of the order, and an order that is mistakenly sent twice). See also Baxter, *supra* note 7, at 1459 (discussing the three general types of errors); French, *supra* note 3, at 1443 (discussing U.C.C. article 4A's handling of erroneous payment orders).

10. See CAL. COM. CODE § 11103(a)(5) (enacted by Chapter 125) (definition of sender). See also Fry, *supra* note 2, at 1412 (sender is the party that gives an instruction to receiving bank).

11. CAL. COM. CODE § 11205 (enacted by Chapter 125). A sender that is not obliged to pay an order must notify the bank of the error within 90 days or the sender may be liable to the bank for the loss. *Id.* § 11205(b) (enacted by Chapter 125). See also Baxter, *supra* note 9, at 1465 (sender has two duties of notification when an erroneous execution has occurred). See generally French, *supra* note 3, at 1425 (examining the treatment of unauthorized and erroneous payment orders).

12. CAL. COM. CODE § 11205(a)(1)-(2) (enacted by Chapter 125). A receiving bank is entitled to recover from a beneficiary any amount paid to the extent allowed under mistake and restitution law. *Id.* § 11205(a)(2)-(3) (enacted by Chapter 125). See *id.* § 11103(a)(2) (enacted by Chapter 125) (definition of beneficiary). Cf. U.C.C. § 4A-205 comment 2 (1990) (risk of loss shifted to receiving bank since the receiving bank has duty to comply with security procedure).

13. See CAL. COM. CODE § 11103(a)(3) (enacted by Chapter 125) (definition of beneficiary's bank). See generally Ballen, *supra* note 8, at 1467 (1990) (explaining the duties of the beneficiary's bank under U.C.C. article 4A).

14. See CAL. COM. CODE § 1201(25) (West Supp. 1990) (definition of know). See also *id.* § 1201(27) (rules for determining when an organization has knowledge of information received by the organization).

15. *Id.* § 11207(b)(1) (enacted by Chapter 125). The originator has no obligation to pay the beneficiary bank if the beneficiary bank pays a nonexistent or unidentifiable person. *Id.* § 11207(a) (enacted by Chapter 125). A beneficiary bank is not required to verify that the name and number refer to the same person. *Id.* § 11207(b)(1) (enacted by Chapter 125). If a beneficiary bank pays the person identified by name or knows that the name and number identify different persons, no person has the right to the payment unless the person paid was entitled to payment. *Id.* § 11207(b)(2) (enacted by Chapter 125). See *id.* § 11104(c) (enacted by Chapter 125) (definition of originator). See also Bradford Trust Co. v. Texas American Bank, 790 F.2d 407, 411 (5th Cir. 1986), Securities Fund Serv. v. American Nat'l Bank & Trust Co., 542 F. Supp. 323, 327 (N.D. Ill. 1982), *aff'd*, 718 F.2d 1104 (1983) (transferring institution liable where a discrepancy existed between name and number of beneficiary).

16. See CAL. COM. CODE § 1104(c) (enacted by Chapter 125) (definition of originator).

17. See *id.* § 1105(a)(2) (enacted by Chapter 125) (definition of bank).

originator must pay for the order.<sup>18</sup> An originator is not obliged to pay the order if the originator is not a bank and if the originator proves that the person identified by number was not entitled to receive the payment.<sup>19</sup>

Under Chapter 125, if the execution<sup>20</sup> of a payment order results in a delay of a payment to a beneficiary, the receiving bank is obliged to pay interest to either the originator or the beneficiary.<sup>21</sup> Consequential damages<sup>22</sup> are only recoverable under Chapter 125 if provided for in an express written agreement.<sup>23</sup> Reasonable attorney fees are recoverable if a party makes a demand for compensation which a bank refuses before an action is brought on the claim.<sup>24</sup>

Under Chapter 125, if a beneficiary's bank accepts a payment order, the sender is obliged to pay to the bank the amount of the

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18. *Id.* § 11207(c)(1) (enacted by Chapter 125). *Cf.* U.C.C. § 4A-207 comment 3 (1990) (losses should be allocated to bank because any bank should know how payment orders are processed and paid).

19. CAL. COM. CODE § 11207(c)(2) (enacted by Chapter 125). An originator may, however, be obliged to pay for the order if the originator's bank proves that the originator had notice that the beneficiary bank was going to make payment on the basis of an account number. *Id.* *See id.* § 11209 (enacted by Chapter 125) (similar provisions regarding payment to beneficiary or intermediary banks by number alone).

20. *See id.* § 11301(a) (enacted by Chapter 125) (definition of executed). *Cf.* U.C.C. § 4A-301 comment 1 (1990) (term "execute" is used only with respect to payment order to a receiving bank other than the beneficiary's bank). *See generally* Baxter, *supra* note 7, at 1449 (discussing execution of payment orders).

21. CAL. COM. CODE § 11305(a) (enacted by Chapter 125). The receiving bank is obliged to pay interest for the period of delay caused by the improper execution. *Id.* A receiving bank is also liable for interest losses and incidental damages for the noncompletion of funds transfers, failure to use a designated intermediary bank, or issuance of a payment order that does not comply with the payment order made by the originator. *Id.* § 11305(b) (enacted by Chapter 125). *See id.* § 11506 (enacted by Chapter 125) (methods of determining rate of interest). *See also* Baxter, *supra* note 7, at 1464 (discussing improper executions that result in delays in payment).

22. *See* CAL. COM. CODE § 1106, California Code Comment (West 1964) (consequential damages only allowed under California Commercial Code section 2715). *See also id.* § 2715 (buyer's incidental and consequential damages).

23. *Id.* § 11305(c)-(d) (enacted by Chapter 125). *See* *Evra Corp. v. Swiss Bank Corp.*, 673 F.2d 951, 958 (7th Cir. 1982) (consequential damages may be imposed only if the culpable bank has notice of particular circumstances giving rise to consequential damages). *See generally* U.C.C. § 4A-305 comment 2 (1990); Esposito, *supra* note 1, at 89-90 (potential liability for consequential damages where bank has notice of special circumstances). *Cf.* 15 U.S.C. § 1693h (1988) (financial institution liable to consumer for all damages from specified causes).

24. CAL. COM. CODE § 11305(e) (enacted by Chapter 125). Reasonable attorney's fees are recoverable even if an agreement does not provide for damages. *Id.*

order.<sup>25</sup> When a sender issues an instruction requiring routing through an intermediary bank<sup>26</sup> and the intermediary bank is unable to complete the transfer or refund payment, the sender is still obliged to pay the receiving bank.<sup>27</sup>

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## Commercial Transactions; industrial loan company loans--repayment period

Financial Code § 18210 (amended).  
AB 3238 (Lancaster); 1990 STAT. Ch. 689

Existing law prohibits industrial loan companies<sup>1</sup> from making any loans secured by real property with a repayment period greater than thirty years.<sup>2</sup> In addition, Chapter 689 allows these loan companies to make loans with forty-year repayment periods, provided that the loans are backed by first trust deeds on real property.<sup>3</sup> However, Chapter 689 limits loans with repayment

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25. *Id.* § 11402(b)-(c) (enacted by Chapter 125). Payment is not due until the payment date of the order. *Id.* See *id.* § 11401 (enacted by Chapter 125) (definition of payment date). See Baxter, *supra* note 7, at 1459 (discussing a sender's liability to pay the receiving bank); Nelson, *Settlement Obligations and Bank Insolvency*, 45 BUS. LAW. 1473, 1475 (1990) (discussing the creation of sender's obligation to pay).

26. See CAL. COM. CODE § 11104(b) (enacted by Chapter 125) (definition of intermediary bank). See also Baxter, *supra* note 7, at 1455 (discussing the use of an intermediary bank). See generally Esposito, *supra* note 1, at 78 (intermediary banks are used in complex transactions).

27. CAL. COM. CODE § 11402(e) (enacted by Chapter 125). However, a sender is subrogated to the right of the bank that paid the intermediary bank to refund. *Id.*

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1. See CAL. FIN. CODE § 18003 (West 1989) (definition of industrial loan company).

2. *Id.* § 18210(a) (amended by Chapter 689). Subject to certain conditions, exceptions are allowed for nonconsumer and government-insured loans. *Id.* See generally Waxman, *The Mortgage Banker-Industrial Loan Company: A New Exempt Company*, 6 PAC. L.J. 1 (1975) (a historical overview of industrial loan companies in California).

3. CAL. FIN. CODE § 18210(a) (amended by Chapter 689). Chapter 689 applies to loans for real property containing single family or up to four residential units. *Id.* Cf. 12 U.S.C. § 1464 (1988) (federal law allows loan companies to issue 40-year loans). See generally 12 C.F.R. § 543.33 (1990) (federal regulations of real property loans).

periods greater than thirty years to an aggregate total of five percent of all outstanding loans and obligations of the loan company.<sup>4</sup>

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## **Commercial Transactions; motor vehicles-- consignment sales**

Vehicle Code §§ 266, 11729, 11730 (new).  
AB 3269 (Bentley); 1990 STAT. Ch. 735  
Sponsor: Department of Motor Vehicles

Existing law requires any person acting as a dealer,<sup>1</sup> remanufacturer,<sup>2</sup> manufacturer, or transporter<sup>3</sup> of motor vehicles to be licensed by the Department of Motor Vehicles.<sup>4</sup> Under existing law, any dealer that fraudulently fails to pay off a vehicle sold on consignment<sup>5</sup> is subject to disciplinary action.<sup>6</sup> Chapter 735 requires any dealer engaging in a consignment sale to execute a prescribed consignment agreement.<sup>7</sup>

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4. CAL. FIN. CODE § 18210(a) (amended by Chapter 689).

1. See CAL. VEH. CODE § 285 (West 1987) (definition of dealer). See also *id.* § 286 (West Supp. 1990) (exclusions from definition of dealer).

2. See *id.* § 507.8 (West 1987) (definition of remanufacturer).

3. See *id.* § 645 (definition of transporter).

4. *Id.* § 11700.

5. See *id.* § 266 (enacted by Chapter 735) (definition of consignment).

6. *Id.* § 11705 (West 1987). See Telephone interview with Bernard Lu, Chief Legal Counsel, Department of Motor Vehicles (Aug. 15, 1990) (notes on file at *Pacific Law Journal*); CALIFORNIA SENATE TRANSPORTATION COMMITTEE, COMMITTEE REPORT ON AB 3269, at 2 (1990) (the only disciplinary action available is an action for fraud if a dealer fails to pay off a vehicle sold on consignment).

7. CAL. VEH. CODE § 11729 (enacted by Chapter 735). A dealer's license may be suspended or revoked if the dealer fails to comply with the terms of a consignment agreement or if the dealer fails to pay the consignor within 20 days from the date of the sale. *Id.* § 11730 (enacted by Chapter 735). See *id.* § 11730 (enacted by Chapter 735) (consignment agreement form).