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Consumer Protection

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Consumer Protection

Consumer protection; dating service and weight loss contracts—cancellation

Civil Code §§ 1694.1, 1694.2, 1694.6, 1694.7 (amended).
AB 1323 (Speier); 1993 STAT. Ch. 359

Existing law allows a buyer¹ to cancel a dating service contract² or weight loss contract³ by midnight of the third business day after formation.⁴ Prior law provided that such a cancellation was effective when the buyer gave written notice of the cancellation to the seller⁵ by certified mail or by telegram.⁶ Chapter 359 allows such cancellation to be effective when sent by regular mail or delivery, as well as by telegram.⁷

Prior law required sellers to refund the money paid pursuant to dating service or weight loss contracts upon a buyer's cancellation, but allowed sellers to deduct from the refund the costs of services provided before the

1. See CAL. COM. CODE § 2103(a) (West 1964) (defining buyer as a person who buys or contracts to buy goods).

2. See CAL. CIV. CODE § 1694 (West Supp. 1993) (defining a dating service contract as a contract with an organization that offers dating, matrimonial, or social referral services by any of the following means: (1) An exchange of names, telephone numbers, addresses, and statistics; (2) a photograph or video selection process; (3) personal introductions; or (4) by a social environment intended as an alternative to other singles' bars or club-type environments).

3. See *id.* § 1694.5 (West Supp. 1993) (defining a weight loss contract as a contract with a weight loss program that offers any of the following: (1) Instruction, counseling, supervision, or assistance in weight reduction, body shaping, diet, and eating habits by persons who are not licensed health care professionals; (2) the use of a weight loss center's facilities; (3) membership in an organization formed to assist its members in weight reduction; or (4) prepackaged "diet foods").

4. *Id.* §§ 1694.1(a), 1694.6(a) (amended by Chapter 359); see *id.* § 1699 (West 1990) (providing that the cancellation of a written contract, made with the intent to end the obligations under it, extinguishes the contract as to all parties consenting to the act of cancellation); *id.* § 1700 (West 1990) (providing that if a party cancels a written contract, that party is not entitled to any benefits to be performed by non-consenting parties under the contract).

5. See CAL. COM. CODE § 2103(d) (West 1964) (defining seller as a person who sells or contracts to sell goods).

6. 1989 Cal. Stat. ch. 138, sec. 1, at 1082 (enacting CAL. CIV. CODE § 1694.1), 1989 Cal. Stat. ch. 138, sec. 2, at 1084 (enacting CAL. CIV. CODE § 1694.6).

7. CAL. CIV. CODE §§ 1694.1(b), 1694.6(b) (amended by Chapter 359); see *id.* (mandating that notice be sent to the address specified in the agreement or offer); *id.* §§ 1694.1(c), 1694.6(c) (amended by Chapter 359) (stating that notice of cancellation by mail is effective when deposited in the mail); *id.* §§ 1694.1(d), 1694.6(d) (amended by Chapter 359) (stating that a cancellation is effective as long as it indicates the buyer's intention not to be bound to the contract). *But see id.* §§ 1694.1(f), 1694.6(f) (amended by Chapter 359) (stating that the contract must still be canceled by mail, telegram, or delivery even after the buyer otherwise notifies the seller).

cancellation took effect.⁸ Under Chapter 359, sellers must now refund all of the money paid for such a contract and may not deduct the cost of services already rendered.⁹ Chapter 359 further requires such contracts to state that a buyer may cancel the agreement within the time allowed without incurring a penalty or obligation.¹⁰

MDL

Consumer Protection; information disclosure—cardholder credit

Civil Code § 1748.12 (new).

AB 609 (Cannella); 1993 STAT. Ch. 622

8. 1989 Cal. Stat. ch. 138, sec. 1, at 1082 (enacting CAL. CIV. CODE § 1694.1), 1989 Cal. Stat. ch. 138, sec. 2, at 1085 (enacting CAL. CIV. CODE § 1694.6); see ASSEMBLY FLOOR ANALYSIS OF AB 1323, at 2 (May 28, 1993) (reporting on a situation in which a consumer paid \$150 to enter a dating service contract, posed for a video, canceled the contract with proper notice, and the dating service only refunded \$50 because it claimed that the cost of making the video was \$100).

9. CAL. CIV. CODE §§ 1694.1(e), 1694.6(e) (amended by Chapter 359); see SENATE FLOOR ANALYSIS OF AB 1323, at 2 (Aug. 16, 1993) (stating that Chapter 359 will close an existing loophole in the law through which dating and weight loss services have been penalizing customers who legally rescind contracts). *But see* CAL. CIV. CODE § 1691(b) (West 1985) (requiring the rescinding party to restore to the non-rescinding party everything of value received under the contract prior to rescission); *id.* § 1692 (West 1985) (providing that any party to a rescinded contract may bring an action to recover any money or property owed to that party under the contract as a result of the rescission).

10. CAL. CIV. CODE §§ 1694.2(b), 1694.7(b) (amended by Chapter 359). Dating service contracts and weight loss contracts must include the following statement in 10-point boldface type:

You, the buyer, may cancel this agreement, without any penalty or obligation, at any time prior to midnight of the original contract seller's third business day following the date of this contract, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. This notice shall be sent to:

(Name of the business that sold you the contract)

(Address of the business that sold you the contract).

Id. See generally SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1323, at 3 (June 29, 1993) (stating that the District Attorneys of San Mateo and Santa Clara Counties have taken actions against Nutri System, Inc. and Weight Watchers North America, alleging that those companies failed to inform their customers of the right to rescind a weight loss contract); Stefani Katz, *People v. Nutri System, Inc.*, THE RECORDER, Aug. 20, 1992, at 2 (reporting that Nutri System, Inc., settled a claim brought by the state Attorney General and the District Attorneys of San Mateo and Santa Clara Counties by agreeing to pay \$400,000 in civil penalties and to change some of business practices); David A. Sylvester, *Weight Watchers Agrees to Pay \$155,500 Fine*, S.F. CHRON., June 3, 1993, at A22 (reporting that Weight Watchers dieting and weight loss centers agreed to pay a civil fine for failing to inform its clients about its refund policies in violation of California Civil Code § 1694.2).

Existing law regulates the disclosure of personal information by agencies.¹ Chapter 622 provides that credit card² issuers shall not disclose marketing information³ about any cardholder⁴ without first giving the cardholder the opportunity to prohibit such disclosures.⁵ Chapter 622 does not apply to communications specified in the credit card agreement,

1. CAL. CIV. CODE § 1798.24 (West Supp. 1993); *see id.* (stating that no agency may disclose information about an individual, except to specified individuals or under specified circumstances). Some of the individuals listed to whom information may be disclosed are: (1) The individual about whom the information pertains; (2) the guardian or conservator of the individual; (3) those persons in the agency that have custody of the information, in the ordinary course of their duties; (4) a person or another agency where the transfer is necessary to perform constitutional or statutory duties; and (5) a government agency when required by law. *Id.* Specified circumstances where information may be disclosed include: (1) The individual about whom the information pertains has given his or her written consent; (2) such disclosure is permitted pursuant to the California Public Records Act; or (3) such disclosure is permitted pursuant to a subpoena or court order. *Id.*; *see id.* § 1798.3(b) (West Supp. 1993) (defining agency as every state office, officer, department, division, bureau, board, commission, or other state agency); CAL. VEH. CODE § 1808.23(c),(d) (West Supp. 1993) (restricting the disclosure of a person's address, and stating that any disclosure must not be used for direct marketing or solicitation).

2. *See* CAL. CIV. CODE § 1748.12(a)(3) (enacted by Chapter 622) (defining credit card as any card, plate, coupon book, or other credit device used to obtain money, property, labor, or services on credit).

3. *See id.* § 1748.12(a)(4) (enacted by Chapter 622) (stating that marketing information means the categorization of cardholders compiled by a credit card issuer based on a cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity which is provided to a marketer of goods for consideration).

4. *See id.* § 1748.12(a)(1) (enacted by Chapter 622) (defining cardholder as any consumer to whom a credit card is issued).

5. *Id.* § 1748.12(b) (enacted by Chapter 622); *see id.* (providing that the credit card issuer shall provide a written notice to all of their cardholders of the right to prohibit disclosures to marketers of goods). The notice must include either a preprinted form or provide a toll-free number so that the consumer may exercise this right. *Id.*; *see id.* § 1748.12(c) (enacted by Chapter 622) (providing that the notice required must be provided to all new cardholders before or at the time the credit card is delivered, and must also be provided to all current cardholders who do not already have an effective election prohibiting disclosure on file); *cf.* 1993 Me. Laws 86 (providing that there shall be no disclosure of the names, addresses and account numbers of credit card holders without the cardholders written permission); VA. CODE ANN. § 59.1-442 (Michie Supp. 1993) (stating that merchants cannot sell information about their purchasers to third parties, without first giving their purchasers notice); *Lamont v. Comm'r of Motor Vehicles*, 269 F. Supp. 880, 883 (S.D. N.Y. 1967) (stating that the Commissioner of Motor Vehicles could release and sell information regarding vehicle registrants, without violating privacy rights since the information was not vital or intimate), *cert. denied*, 391 U.S. 915 (1968); *Shibley v. Time, Inc.*, 341 N.E.2d 337, 339 (Ohio 1975) (stating that the right of privacy does not extend to the mailbox and it is therefore constitutionally permissible to sell subscription lists to direct mail advertisers). *See generally* Joel E. Smith, Annotation, *Invasion of Privacy by Sale or Rental of List of Customers, Subscribers, or the Like to Anyone Who Will Use It for Advertising Purposes*, 82 A.L.R.3d 772 (1978) (noting that the courts that have been confronted with the issue of whether the sale of a list of customers for advertising purposes constitutes an invasion of privacy, have agreed that it is not an invasion of privacy); John F. Lawrence, *Urgent! If You Get Junk Mail, Read This Now!*, L.A. TIMES, Sept. 21, 1986, § 4, at 1 (arguing that it is possible to stop junk mail, but that most people do not want to be rid of it all); *What Price Privacy?*, CONSUMER REP., May 1991, at 356 (noting that public concern about privacy is at an all time high, and citing results from a Harris Poll where 79% of those surveyed said that they were concerned about threats to their personal privacy).

communications to consumer credit reporting agencies,⁶ or communications to a corporate subsidiary or affiliate⁷ of the credit card issuer.⁸ Chapter 622 further provides that compliance with federal requirements regarding disclosure would also constitute compliance with Chapter 622.⁹

SAK

Consumer Protection; motor vehicle warranty adjustment programs

Civil Code §§ 1795.90, 1795.91, 1795.92, 1795.93 (new); Vehicle Code § 1808.23 (amended).
SB 486 (Rosenthal); 1993 STAT. Ch. 814

Under existing federal law, a motor vehicle¹ manufacturer² who knows³ of a vehicle defect⁴ relating to motor vehicle safety,⁵ must notify

6. See CAL. CIV. CODE § 1748.12(a)(2) (enacted by Chapter 622) (defining consumer credit reporting agency as one who engages in the business of assembling or evaluating consumer credit information for the purpose of furnishing consumer credit reports to third parties); see also *id.* § 1785.3 (West Supp. 1993) (defining terms in connection with the Consumer Credit Reporting Agencies Act, such as adverse action, consumer, consumer credit report, consumer credit reporting agency, employment purposes, and file).

7. See CAL. CORP. CODE § 150 (West 1990) (defining affiliate).

8. CAL. CIV. CODE § 1748.12(e) (enacted by Chapter 622).

9. *Id.* § 1748.12(f) (enacted by Chapter 622); see ASSEMBLY FLOOR ANALYSIS OF AB 609, at 1 (May 28, 1993) (providing that federal law regarding disclosure shall pre-empt state law); see also *Hillsborough County, Fla. v. Automated Medical Labs*, 471 U.S. 707, 713 (1985) (stating that the Court has repeatedly held that state laws can be preempted by federal regulations as well as by federal statutes). Federal regulation obviously supersedes state regulation where compliance with both is a physical impossibility. *Id.*; *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984) (preempting a California law nullifying certain arbitration clauses in contracts because the Federal Arbitration Act withdrew the power of the states to require a judicial forum); *McDermott v. Wisconsin*, 228 U.S. 115, 132 (1913) (holding that where state law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior federal power). See generally Sven Krogus, Comment, *Dewey v. R.J. Reynolds Tobacco Co.: A Welcome Restraint in Applying Preemption Doctrine to State Tort Actions*, 57 BROOK. L. REV. 209, 213 (1991) (analyzing the preemption doctrine and traditional formulas used to determine whether state law has been preempted by federal law); S. Candice Hoke, Comment, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 685, 691-92 (1991) (arguing that business and industry groups have increasingly sought to have state law preempted where it is more burdensome or aggressive than the pertinent federal law).

1. See 15 U.S.C. § 1391(3) (1988) (defining motor vehicle).

2. See *id.* § 1391(5) (1988) (defining manufacturer).

3. See *Witherow v. United Am. Ins. Co.*, 101 Cal. App. 334, 339, 281 P. 668, 671 (1929) (finding that knowledge is actual information of facts and not speculation or opinion).

dealers⁶ and owners of the vehicle about the defect.⁷ Chapter 814 requires manufacturers⁸ to notify all motor vehicle⁹ owners, lessees,¹⁰ dealers,¹¹ and the New Motor Vehicle Board,¹² of the adoption of an adjustment program.¹³ Chapter 814 also requires manufacturers to reimburse any consumers¹⁴ for repairs which are covered by the adjustment program but were performed prior to the consumers knowing of the program.¹⁵

4. See 15 U.S.C. § 1391(11) (1988) (defining defect); *United States v. General Motors Corp.*, 518 F.2d 420, 426-27 (D.C. Cir. 1975) (holding that a vehicle contains a defect if it has a significant number of failures, excluding failures caused by normal wear and tear, occurring during normal use or reasonably foreseeable owner abuse).

5. See 15 U.S.C. § 1391(1) (1988) (defining motor vehicle safety).

6. See *id.* § 1391(7) (1988) (defining dealer).

7. *Id.* § 1411 (1988); see 49 C.F.R. §§ 577.1-577.9 (1976) (regulating automobile manufacturer's defect notification); *General Motors Corp.*, 518 F.2d at 435 (stating that by enacting the notification statute, Congress intends consumers to receive notification when a vehicle doesn't conform to manufacturer's instructions and also when there is an inadequate margin of safety when operating the vehicle as reasonably expected); see also SENATE FLOOR ANALYSIS OF SB 486, at 1 (May 13, 1993) (stating that under California law there was no duty for a vehicle manufacturer or dealer to notify consumers about vehicle defects).

8. See CAL. CIV. CODE § 1795.90(b) (enacted by Chapter 814) (defining manufacturer as a person, firm, or corporation that manufactures, assembles, or imports motor vehicles).

9. See *id.* § 1795.90(e) (enacted by Chapter 814) (defining motor vehicle as a registered motor vehicle, excluding motorcycles, motor homes, and off-road vehicles).

10. See *id.* § 1795.90(f) (enacted by Chapter 814) (defining lessee as a person leasing a motor vehicle pursuant to a written contract, who is responsible for repairs to the motor vehicle).

11. See *id.* § 1795.90(c) (enacted by Chapter 814) (defining dealer as a person, firm, or corporation selling or agreeing to sell motor vehicles under agreement with a manufacturer or distributor, or their agent).

12. See CAL. VEH. CODE § 3000 (West 1987) (creating the New Motor Vehicle Board within the Department of Motor Vehicles).

13. CAL. CIV. CODE § 1795.92(a)-(c) (enacted by Chapter 814); see *id.* § 1795.90(d) (enacted by Chapter 814) (defining adjustment program to mean any program, other than a safety or emission-related recall campaign, that extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or part of the cost of repairing a condition that may substantially affect the durability, reliability, or performance of the vehicle); cf. CONN. GEN. STAT. § 42-227(c) (1990) (requiring manufacturers to notify consumers of the adoption of an adjustment program); VA. CODE ANN. § 59.1-207.35 (Michie 1992) (requiring both consumers and dealers to be notified upon the adoption of an adjustment program).

14. See CAL. CIV. CODE § 1795.90(a) (enacted by Chapter 814) (defining consumer as a non-resale purchaser of a motor vehicle, a lessee of a motor vehicle, or any other person entitled to enforce obligations of a motor vehicle's warranty).

15. *Id.* § 1795.92(d) (enacted by Chapter 814); see also SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 486, at 3 (May 4, 1993) (stating that the author intended Chapter 814 to stop auto manufacturers from issuing secret warranties); cf. CONN. GEN. STAT. § 42-227(f) (1990); VA. CODE ANN. § 59.1-207.37 (Michie 1992) (requiring reimbursement of covered repairs made by consumers prior to their knowledge of an adjustment program); Steve Everly, *Honda Quietly Begins Accord Tire Inspections*, PHOENIX GAZETTE, Apr. 3, 1993, at CL2 (describing American Honda Motor Co.'s unpublicized program of inspecting Accord tires after it was discovered the tires were wearing out prematurely); Helen Kahn, *Toyota Suit Has Boon for Consumer*, AUTOMOTIVE NEWS, Mar. 13, 1989, at 1 (describing Toyota's settlement in a class action suit based on unfair trade practices because of an alleged secret warranty on Toyota Camry vehicles); Helen Kahn, *Wisconsin Enacts Secret Warranty Law*, AUTOMOTIVE NEWS, June 1, 1992, at 9 (reporting that Wisconsin became only the third state to enact a secret warranty law); David Sedgwick, "Secret Warranties" Sometimes Available, SACRAMENTO BEE, Feb. 5, 1993, at C16 (describing secret warranties as instances when car manufacturers discover a pattern of defects in a line of cars and instruct dealers to repair the defect to

Chapter 814 requires motor vehicle dealers to post a notice stating how a prospective consumer may obtain service bulletins.¹⁶ Chapter 814 also requires motor vehicle dealers to inform consumers, who are seeking car repairs, about any adjustment programs covering the condition being repaired.¹⁷

AMP

Consumer Protection; smog certificate

Vehicle Code § 5751.5 (new); §§ 4000.1, 24007 (amended).
SB 575 (Rogers); 1993 STAT. Ch. 958

Under existing law, a certificate¹ of compliance or noncompliance²

complaining customers for free without informing all customers). *But see* Keith Crain, 'Secret Warranties' are Better Than None, AUTOMOTIVE NEWS, July 16, 1990, at 12 (stating that the effect of requiring a secret warranty to be publicized will be the elimination of all secret warranties by vehicle manufacturers, and stating that it would be better to have the warranty available to a few consumers rather than available to none).

16. CAL. CIV. CODE § 1795.91(a) (enacted by Chapter 814). Notice must be posted in a conspicuous place in the showroom and written in the following form:

FEDERAL LAW REQUIRES MANUFACTURERS TO FURNISH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (N.H.T.S.A.) WITH BULLETINS DESCRIBING ANY DEFECTS IN THEIR VEHICLES.

YOU MAY OBTAIN COPIES OF THESE BULLETINS, FOR A FEE, FROM EITHER OF THE FOLLOWING:

THE MANUFACTURER (ASK YOUR DEALER FOR THE TOLL-FREE NUMBER)
N.H.T.S.A. -- TECHNICAL REFERENCE DIVISION
400 SEVENTH STREET, S.W.
ROOM 5110
WASHINGTON, D.C. 20590
202-366-2768

IN ADDITION, CERTAIN CONSUMER PUBLICATIONS PUBLISH THESE BULLETINS AND SOME COMPANIES WILL SEND THEM TO YOU, FOR A FEE.

Id.; *see id.* § 1795.90(g) (enacted by Chapter 814) (defining service bulletin as a notice issued by a manufacturer and filed with the National Highway Traffic Safety Administration relating to vehicle durability, reliability, or performance).

17. *Id.* § 1795.91(b) (enacted by Chapter 814); *cf.* CONN. GEN. STAT. § 42-227(e) (1990); VA. CODE ANN. § 59.1-207.36(B) (Michie 1992) (requiring motor vehicle dealers to notify consumers seeking car repairs about adjustment programs covering the repairs).

1. *See* CAL. HEALTH & SAFETY CODE § 39018 (West 1986) (stating that certification means a finding by the State Air Resources Board that a motor vehicle has satisfied the criteria for the control of specified air contaminants from vehicular sources).

with motor vehicle³ emission standards⁴ is required upon the transfer of a vehicle registration.⁵ Chapter 958 provides that in a district in which

2. See *id.* § 44015(b) (West Supp. 1993) (providing that if a vehicle meets the requirements of California Health and Safety Code § 44012, a licensed smog check station will issue a certificate of compliance or noncompliance); *id.* § 44012 (West Supp. 1993) (specifying that the smog check test shall include, but not be limited to, the following: (1) A determination of whether the emission control devices and systems required by state and federal law are installed and functioning correctly; (2) a preconditioning of the vehicle to ensure representative and stabilized operation of the emission control system; and (3) a test of the vehicle's emissions of hydrocarbons, carbon monoxide, and carbon dioxide); CAL. CODE REGS. tit. 26, § 16-3340.35 (1992) (setting forth procedures with respect to the issuance of certificates of compliance and noncompliance).

3. See CAL. VEH. CODE § 415 (West Supp. 1993) (defining motor vehicle as a vehicle that is self-propelled, which does not include wheelchairs or other instruments operated by a person who, because of a physical disability, cannot otherwise move about as a pedestrian).

4. See CAL. HEALTH & SAFETY CODE § 39027 (West 1986) (defining emission standards as specified limitations on the discharge of air contaminants into the atmosphere); *id.* § 44013(a) (West Supp. 1993) (stating that the Department of Motor Vehicles, in cooperation with the State Air Resources Board, will prescribe maximum emissions standards to be applied in inspecting motor vehicles); CAL. CODE REGS. tit. 26, § 16-3340.42 (1992) (setting forth mandatory exhaust emission standards and test procedures); *cf.* 42 U.S.C.S. § 7521 (Law. Co-op. 1989 & Supp. 1993) (authorizing the administrator of the Environmental Protection Agency to establish emissions standards for new motor vehicles and motor vehicle engines); ARIZ. REV. STAT. ANN. § 49-542 (Supp. 1993); COLO. REV. STAT. §§ 42-4-306.1 to -321 (1993); GA. CODE ANN. § 12-9-45 (1992); MO. ANN. STAT. § 307.366 (Vernon Supp. 1993); NEV. REV. STAT. ANN. §§ 445.610 - .710 (1991); OR. REV. STAT. ANN. §§ 468A.350 - .400 (1992) (setting forth vehicle emissions inspection programs for their respective states); *State v. Burns*, 591 P.2d 563, 566 (Ariz. Ct. App. 1979) (stating that the emissions program enacted by the Legislature was reasonably calculated to control air pollution and thus was a valid exercise of police power to protect the health, welfare and safety of citizens of that state). See generally 42 U.S.C.S. §§ 7401-7642 (Law. Co-op. 1989 & Supp. 1993) (setting forth the federal Clean Air Act); Ora Fred Harris, Jr., *The Automobile Emissions Control Inspection and Maintenance Program: Making It More Palatable to "Coerced" Participants*, 49 LA. L. REV. 1315 (1989) (discussing generally the federal Clean Air Act, the status of inspection and maintenance programs and suggesting approaches to make such programs more palatable within our society); 4 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§ 71-74 (9th ed. 1987 & Supp. 1993) (discussing generally California and federal air quality and regulations).

5. CAL. VEH. CODE § 4000.1 (amended by Chapter 958); see *id.* § 4000(a)(1) (West Supp. 1993) (specifying that no person shall drive, move, or leave standing upon a highway, or in an off-street public parking facility, any motor vehicle unless it is registered and the appropriate fees have been paid); *id.* § 4000.1(a) (amended by Chapter 958) (requiring a valid certificate of compliance upon initial registration, and upon registration of a motor vehicle previously registered in another state); *id.* § 4000.1(d)(1)-(5) (amended by Chapter 958) (stating that certificates of compliance or noncompliance are not required for a transfer of ownership if: (1) The transferor is the parent, grandparent, child, grandchild, or spouse of the transferee; (2) a vehicle registered to a sole proprietor is transferred to the proprietor as owner; (3) the transfer is between companies of which the principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle, or between the lessor and the person who has been the lessee's operator for at least one year; (4) the transfer is between the lessor and lessee of the vehicle, if there has been no change in the lessee or operator; or (5) the vehicle was manufactured prior to the 1966 model-year); *id.* § 4000.3(a) (West Supp. 1993) (requiring a valid certificate of compliance biennially upon renewal of registration of any applicable motor vehicle); see also CAL. HEALTH & SAFETY CODE § 44011 (West Supp. 1993) (setting forth exceptions to the biennial certification requirement); *cf.* GA. CODE ANN. § 12-9-51 (1992) (requiring a certificate of emission inspection for motor vehicle registration); NEV. REV. STAT. ANN. § 445.670 (1992) (requiring evidence of compliance with the emissions control program when registering a vehicle). See generally CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS, BUREAU OF AUTOMOTIVE REPAIR, *California Biennial Smog Check Program - Participating Counties (Revised 11/18/92)* (copy on file with the *Pacific Law Journal*) (illustrating with a map, the counties subject to the Biennial Smog Check Program as of January 1, 1992).

biennial certification is required, the certification requirements will not apply to a transfer if a valid certificate was issued in connection with the most recent registration renewal and the transfer occurred within sixty days of the renewal.⁶

Chapter 958 also requires that upon transfer of title or interest by the registered owner⁷ of a motor vehicle, the transferor must sign and deliver to the transferee⁸ a statement, under penalty of perjury,⁹ that the emission system has not been tampered with¹⁰ by the transferor or by anyone else in a manner that would cause the emission system to fail to qualify for a certificate of compliance.¹¹ The Department of Motor Vehicles will prescribe and make the necessary forms available to transferors so that they may comply with these provisions.¹² If the transferor is found to

6. CAL. VEH. CODE § 4000.1(d)(1) (amended by Chapter 958). *See* ASSEMBLY COMMITTEE ON WAYS AND MEANS, COMMITTEE ANALYSIS OF SB 575, at 1 (Aug. 18, 1993) (indicating that according to the author of SB 575, consumers will save \$2.5 to \$3 million annually). *But see id.* (indicating that the Vehicle Inspection Repair Fund will sustain a potential revenue loss of up to \$756,000 per year).

7. *See* CAL. VEH. CODE § 505 (West 1987) (defining registered owner).

8. *See id.* § 640 (West 1987) (defining transferee).

9. *See* CAL. PENAL CODE § 118 (West Supp. 1993) (defining perjury).

10. *See* CAL. VEH. CODE § 27156 (West 1985) (stating that no person shall operate a motor vehicle that is required to be equipped with a motor vehicle pollution control device unless the vehicle is equipped with the required device which is correctly installed and in operating condition and stating further that no person shall disconnect, modify, or alter any such device); CAL. HEALTH & SAFETY CODE § 39040 (West 1986) (defining motor vehicle pollution control device as equipment designed for installation on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle, or a system or engine modification on a motor vehicle which reduces the air contaminant emissions from the vehicle); CAL. CODE REGS. tit. 26, § 16-3340.41.5 (1992) (defining tampered emissions control system); *see also* 74 Op. Cal. Att'y Gen. 127, 127 (1991) (concluding that licensed smog check stations may be directed by the Bureau of Automotive Repair to deny a certificate of compliance to the owner of a vehicle if the emission control system contains an aftermarket component that has not been approved by the State Air Resources Board pursuant to California Vehicle Code § 27156); *cf.* ARIZ. REV. STAT. § 49-542(G) (Supp. 1993) (requiring a biennial tampering inspection in addition to an emissions inspection and setting forth the guidelines for the tampering inspection).

11. CAL. VEH. CODE § 5751.5(a) (enacted by Chapter 958); *see id.* (enacted by Chapter 958) (requiring that the transferor must sign and deliver the original copy of the statement to the transferee upon completion of the transaction and requiring the transferor to keep a duplicate copy of the statement); *id.* § 24007(b)(1) (amended by Chapter 958) (providing that no person shall sell a new or used motor vehicle which is not in compliance with the rules and regulations of the State Air Resources Board); *id.* § 24007(b)(3) (amended by Chapter 958) (specifying that the above stated restriction does not apply to any vehicle of which the transfer of ownership is exempt from the certification requirements under California Vehicle Code § 4000.1(d)); *see also* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 575, at 2 (June 28, 1993) (stating that Chapter 958 is consumer protection oriented and that the statement by the seller that no tampering has occurred protects the new owner from being liable for unlimited repair costs to meet emissions standards).

12. CAL. VEH. CODE § 5751.5(a) (enacted by Chapter 958); *see id.* § 5751.5(b) (enacted by Chapter 958) (stating that any form prescribed by the Department of Motor Vehicles will contain a warning to the buyer and a space for signatures of the transferor and transferee at the end of the statement); *id.* (stating that the warning must advise the buyer that the vehicle may not be in compliance with emission standards, that by signing the agreement the buyer acknowledges that the seller is not required to provide an additional certificate of compliance, and that the buyer may have the vehicle inspected prior to the completion of the transaction, but that the buyer will be responsible for the cost of the inspection if the vehicle passes the test).

have committed perjury, the sale of the motor vehicle may be rescinded by the transferee within sixty days after the transferee discovered the perjury.¹³

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13. CAL. VEH. CODE § 5751.5(c) (enacted by Chapter 958); *see id.* (providing that the transferee will be entitled to recover all consideration paid to the transferor and any interest from the date of sale and that, in addition, the court may, upon motion, award reasonable attorney's fees to the prevailing plaintiff); *see also* ASSEMBLY COMMITTEE ON TRANSPORTATION, COMMITTEE ANALYSIS OF SB 575, at 2 (June 28, 1993) (noting that the opposition to Chapter 958 says that the buyer is unlikely to discover that the emission system has been tampered with within 60 days of the purchase); *cf.* GA. CODE ANN. § 12-9-54 (1992) (stating that a person who sells a motor vehicle which is required to have a certificate of emission inspection is guilty of a misdemeanor if the certificate of emission for that vehicle has expired); LA. REV. STAT. ANN. § 32:1304(F) (West 1989) (providing that the purchaser of a used vehicle from a private individual shall be protected from citations for failure to have an inspection tag during the interval between the date of purchase and the receipt of title provided proof of application can be shown); *id.* § 51:1949 (West 1987) (stating that any person who sells a motor vehicle from which the emission controls have been removed, disconnected, or otherwise rendered inoperable without disclosing such fact to the potential buyer prior to the sale of the vehicle is guilty of unfair and deceptive trade practices); WASH. REV. CODE ANN. § 70.120.190(1) (West 1992) (specifying that motor vehicle dealers must include a notice to buyers that they may be required to spend up to a specified dollar amount for repairs if the vehicle does not meet the vehicle emissions standards and stating that unless the dealer expressly warrants it, the dealer does not warrant that the vehicle will pass any emission tests required by federal or state law).

