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Business Associations

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Business Associations

Business Associations; business licenses

Business and Professions Code §§480, 481, 483, 488, 490, 492 (repealed); §§480, 481, 490 (new); §§475, 477, 482, 484, 486, 487, 491 (amended).

SB 1767 (Way); STATS 1974, Ch 1321

Prohibits license suspension, revocation, or denial based on a lack of good moral character; specifies that denial, suspension, or revocation may be based on specified acts or crimes if the act or crime is substantially related to the licensed occupation; requires licensing boards to establish criteria to determine if an act or crime is so related; makes related changes.

In 1972 division 1.5 (commencing with §475) was added to the Business and Professions Code to provide uniform criteria for the suspension, revocation, or denial of business licenses required by the Business and Professions Code. Section 475 specifically stated that the provisions contained in division 1.5 would govern the denial of business licenses where the denial was based on a showing that the applicant lacked a good moral character or had made a false statement of fact in the license application. Section 475 also governed the suspension or revocation of business licenses where the licensee had been convicted of a crime. Chapter 1321 amends section 475 to provide that licenses may no longer be denied, suspended, or revoked solely because the applicant demonstrates a lack of "good moral character," and to specify that the provisions contained in division 1.5 shall govern all license denials, suspensions, or revocations based on a false statement of fact in the license application or conviction of a crime. In addition, the amended section includes other grounds for license denials: acts involving dishonesty or deceit or acts which if done by a licensee, would be grounds for license suspension or revocation. Since several of the provisions contained in division 1.5 related to license suspension, revocation, or denial based upon a finding that the applicant or licensee lacked a "good moral character," the deletion of this standard in the amended section 475 has necessitated changes in several related code sections. In addition, several technical changes have been made to insure that the offense for which a license is denied, suspended,
or revoked is substantially related to the business in which the applicant or licensee is engaged.

Section 480, which provided that a licensing board could deny an application for a business license if the applicant had been engaged in activities which demonstrated a lack of good moral character, has been repealed, and a new section 480 has been added to provide that a licensing board may deny a license on certain specified grounds, including (1) conviction of a crime, (2) involvement in an act of fraud or deceit with the intent to benefit oneself or to substantially injure another, (3) involvement in activities which would warrant license suspension or revocation if the applicant had been a licensee, and (4) the making of a false statement in the license application. The new section also provides that the crimes or acts for which the license is denied must be substantially related to the business for which the license is sought. Section 481, which defined acts demonstrating a lack of good moral character, has been repealed, and a new section 481 has been added to require the respective licensing boards to establish criteria to determine whether the act or crime is substantially related to the business for which the license is sought. Section 484 has been amended to provide that no applicant shall be required to have a third person attest to his good moral character.

To establish similar procedural requirements for both license suspension and license revocation, section 490, which dealt with license revocation or suspension when the licensee had been convicted of a crime, has been repealed, and a new section 490 added. This new section provides that a board may suspend or revoke a license based on conviction of a crime if the crime is related to the business for which the person is licensed, or for the making of a false statement in the original license application. Lastly, section 482 has been amended to provide that each licensing board shall establish criteria to evaluate the rehabilitation of applicants and licensees when considering license denial, suspension, or revocation. Sections 486, 487, and 491 have undergone technical revisions pertaining to hearings and other related matters.

Although the enactment of chapter 1321 has necessitated extensive revision of division 1.5, the primary thrust of the legislation may be summarized as follows: (1) A business license may no longer be denied, suspended, or revoked based upon the fact that the applicant or licensee has demonstrated a “lack of good moral character”; (2) licenses may be denied, suspended, or revoked if the applicant or li-
LICENSEE has engaged in specified acts or crimes, but only if the act or crime is substantially related to the business for which the license is obtained (licensing boards are required to establish criteria to determine whether the act or crime is so related); and (3) when considering license suspension, denial, or revocation, the respective licensing boards are required to consider evidence of the rehabilitation of the applicant or licensee.

See Generally:
1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 253 (1973) (addition of division 1.5 to provide uniform criteria for license suspension, revocation, or denial).

Business Associations; discrimination by licensees

Business and Professions Code §125.6 (new).
AB 1774 (Dixon); STATS 1974, Ch 1350
Support: Attorney General; National Organization of Women; League of Women Voters; Women Lawyers Association of Los Angeles; National Association for the Advancement of Colored People
Opposition: California Real Estate Association

Chapter 1350 utilizes for the first time the state's business licensing procedure as a vehicle for combating discrimination by state licensees, and has been enacted to provide that all persons licensed under the provisions of the Business and Professions Code shall be subject to disciplinary action if they engage in specified discriminatory activities. Section 125.6 has been added to provide that any licensee who refuses to perform his licensed activity or incites another licensee to refuse to perform his licensed activity because of discrimination based on race, color, sex, religion, or national origin shall be subject to disciplinary action by the applicable licensing board.

In addition to the sanctions contained in chapter 1350, the Unruh Civil Rights Act [CAL. CIV. CODE §§51-52] prohibits discrimination based on race, color, religion, or national origin by all business establishments operating in the state. Under the provisions of that Act, each violation subjects the offender to liability for punitive damages up to $250 for each offense, as well as actual damages suffered by any person because of such discrimination. Thus, holders of licenses under the Business and Professions Code who qualify as business establishments may be liable under the Unruh Act and chapter 1350 for discrimination on the basis of race, color, religion, or national origin, whereas such persons will be liable for discrimination on the basis of
sex only under chapter 1350. It should be noted that chapter 1350 does not set up discrimination as a basis for license denial, but addresses itself solely to disciplinary action against persons already holding licenses under the provisions of the Business and Professions Code. The new sanctions apply to discrimination in performing the licensed activity itself, and do not apply to discrimination by employers with respect to hiring practices. Finally, clubs holding alcoholic beverage licenses and utilizing discriminatory membership policies are specifically exempted from the operation of the chapter.

See Generally:

Business Associations; cosmetology licenses

Business and Professions Code §7431 (amended).
SB 880 (Song); STATS 1974, Ch 99

Section 7431 of the Business and Professions Code, which delineates the grounds for disciplinary action taken by the State Cosmetology Board, has been amended to provide that failure to comply with rules approved by the Board for regulation of the practice of cosmetology shall be grounds for disciplinary action by the board. Prior to this amendment, there was statutory authority for disciplinary action only if such violation of board regulations related to sanitary conditions and other general grounds set out in section 7431. Because the power to enforce such rules by license revocation has been deemed implicit in the power to make such rules, the legislature has codified existing policy by including violation of board rules as grounds for disciplinary action.

See Generally:
1) 27 Ops. Att'y Gen. 238 (1956) (right to discipline cosmetology schools).

Business Associations; travel promoters

Public Utilities Code Chapter 5.5 (commencing with §4900), Part 3 (commencing with §24001) (repealed); Business and Professions Code Article 2.5 (commencing with §17540) (new).
SB 2402 (Nejedly); STATS 1974, Ch 1272

In order to provide for comprehensive state regulation of the business practices of travel promoters, article 2.5 (commencing with

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§17540 has been added to the Business and Professions Code to establish various business procedures to be followed by such promoters. A travel promoter is defined by section 17540.1 as a person who sells, advertises, or otherwise arranges air or sea transportation, but does not include air or ocean carriers or their agents or certain specified motor clubs. Section 17540.6 provides that such a travel promoter shall not advertise that air or sea transportation is available unless he has previously contracted with an air or ocean carrier to provide such transportation. Section 17540.8 specifies that the promoter shall not accept any form of consideration for services rendered in conjunction with transportation arrangements unless he furnishes the prospective passenger with a written statement containing certain specified information, including the promoter's business address, conditions under which the transportation may be cancelled, and a notice that all sums paid for services not performed due to cancellation will be refunded to the passenger as required by section 17540.9. In addition, section 17540.9(b) provides that any misrepresentation of the date, time of arrival or departure, or type of aircraft or ocean carrier shall be deemed a cancellation requiring such a refund.

In order to further protect the passenger from possible financial hardship due to cancellation, section 17540.10 has been added to require such a promoter to either deposit ninety percent of all sums received in a trust account for the benefit of the passenger, or to post a bond for the same purpose. If the travel promoter elects to utilize a trust account, this section provides that the account may only be drawn upon in payment of services rendered by the carrier or to make required refunds, and thus it appears that the promoter may not draw upon this fund in payment for his own services where such payment exceeds the ten percent which he is allowed to retain. All sums in the account may be withdrawn, however, after all goods and services contracted for have been provided.

If the travel promoter elects to post a bond instead of maintaining the trust account, the bond must meet certain criteria, set out in section 17540.7, relating to the amount of the bond and the persons who must be named as beneficiaries of the bond. Section 17540.11 provides that the promoter shall deliver tickets or vouchers to the passenger upon request when the purchase price has been fully paid. In an effort to consolidate the applicable code sections, chapter 5.5 (commencing with §4900) and part 3 (commencing with §24001) of the Public Utilities Code, which contained prior provisions regulating travel promoters and air carriers, have been repealed.
Business Associations; biologics—licensing and registration

Food and Agricultural Code Chapter 1.5 (commencing with §9201) (new); Health and Safety Code §1600.1 (amended).
SB 2085 (Stiern); Stats 1974, Ch 312

In order to provide for state supervision of the production, sale, and use of biologics, chapter 1.5 (commencing with §9201) has been added to the Food and Agricultural Code to establish various licensing and registration requirements. Section 9211 provides that after July 1, 1975, no person shall engage in the production of biologics, which are defined by section 9203 as vaccines, viruses, and gland and tissue extracts used in the treatment of diseases in animals, except in establishments meeting specified licensing requirements. Required licenses are to be issued by the Director of Agriculture to establishments meeting the safety requirements specified by section 9212. Section 9221 establishes guidelines for the licensing procedure, relating to the content of the license application.

In a further effort to regulate the production and sale of biologics, section 9241 requires biologics which are offered for sale after July 1, 1975, to be registered with the Department of Agriculture, and such biologics may only be registered if they meet certain purity and safety requirements established by section 9242. Further, biologics which are exempted from the licensing requirements because they are used in treating the producer's own animals are nevertheless required to be registered by section 9243. Section 9251 empowers the Director to make any additional rules and regulations which he may deem necessary to implement these provisions. Handlers of human blood and blood products are specifically exempted from these provisions under specified circumstances, and section 1600.1 of the Health and Safety Code has undergone technical revision to exempt from the provisions of that code those biologics which are licensed and registered pursuant to the new chapter 1.5 of the Food and Agricultural Code.

Business Associations; foreign attorneys

Business and Professions Code §6062 (amended).
AB 1066 (Cullen); Stats 1974, Ch 34
Support: Cuban National Bar Association; State Bar of California

Section 6062 of the Business and Professions Code has been amended to provide that persons admitted to practice law in any foreign jurisdiction may be certified to practice in California upon passing the final
bar examination given to general applicants pursuant to section 6060(f) of the Business and Professions Code, when such an applicant has actively practiced law for four of the six years immediately preceding his application or demonstrates to the examining committee that he is qualified to take the examination. The provisions of section 6062 relating to minimum age requirements and moral character of applicants for admission have been re-enacted without amendment.

Prior to this amendment, only attorneys from foreign jurisdictions having the common law of England as a basis of jurisprudence were permitted to apply for admission to practice in California. This amendment removes the requirement that an applicant come from a common law jurisdiction if he or she can pass the general bar examination given to domestic applicants.

See Generally:
1) COMMITTEE OF BAR EXAMINERS, Rules Regulating Admission To Practice Law, Rule IV, §41 (1974).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 275 (1973) (citizenship requirement for licenses).

Business Associations; unfinished legal matters

Business and Professions Code Article 11 (commencing with §6180) (new).
AB 3688 (Maddy); STATS 1974, Ch 589
Support: State Bar of California

In order to protect the client's interests when an attorney is unable to continue practicing law, article 11 (commencing with §6180) has been added to chapter 4 of the Business and Professions Code to establish a procedure whereby unfinished client matters not assumed by other attorneys may, with the consent of the client, be brought under the jurisdiction of the courts of this state. Section 6180 provides that in the event that an attorney dies, resigns, becomes inactive, is disbarred, or is suspended, leaving unfinished client matters, a notice of cessation of law practice shall be given to interested parties. This notice must be given by the attorney himself, except where he has died or become incompetent, in which case the notice is to be given by his personal representative as specified by section 6180.1. Sections 6180.2 and 6180.3 provide that even when such a notice is given, a client or other interested party may request the superior court to assume jurisdiction, upon alleging that there are unfinished client matters, that the attorney is unable to continue practicing, and that prejudice would result should the
court refuse to conduct a hearing to determine whether court intervention is warranted. If, after the hearing required by section 6180.4, the court determines that it should intervene, it may appoint an attorney to carry out certain functions specified by section 6180.5, including examining the affected attorney’s files, advising apparent clients to obtain new legal counsel, and filing motions and pleadings with the client’s consent where it is necessary to do so because of jurisdictional time limits. Section 6180.10 provides that the appointed attorney shall observe the lawyer-client relationship while examining the files of the affected attorney, and sections 6180.6 and 6180.7 prohibit (1) interference by the appointed attorney in the hiring of new legal counsel and (2) the referral of client matters to associates or partners of the appointed counsel. Sections 6180.8 through 6180.14 enact various provisions necessary to implement the new procedure relating to interim orders, compensation of appointed attorneys, and related technical matters.

Business Associations; Spanish translation of contracts

Civil Code §1632 (new).
AB 2797 (Alatorre); STATS 1974, Ch 1446

In order to insure that Spanish-speaking persons who negotiate contracts with businessmen or merchants fully understand the terms of such contracts, section 1632 has been added to the Civil Code to provide that in certain specified instances an unexecuted Spanish language version of the contract shall be furnished to the consumer before the execution of the formal contract. Subsection (a) of section 1632 defines the contracts encompassed by the provisions of this Act as (1) retail installment contracts within the provisions of the Unruh Act [CAL. CIV. CODE §1801 et seq.], automobile conditional sales contracts within the provisions of the Rees-Levering Motor Vehicle Sales and Finance Act [CAL. CIV. CODE §2981 et seq.], and automobile leasing contracts within the Moscone Automobile Leasing Act of 1969 [CAL. CIV. CODE §2985.7 et seq.]; (2) contracts for a loan or extension of credit not secured by real property where such a loan or credit is to be used for personal or household expenses; (3) contracts for the lease, sublease, or rental of a dwelling, apartment, or mobilehome for a period exceeding one month; and (4) loans or extensions of credit for personal or household purposes which are secured by real property if the contract is a real property loan within the provisions of article 7 (commencing with §10240) of the Business and Professions Code, an industrial loan within the provisions of division 7 (commencing with §18003.2) of the Fi-
nancial Code, or a personal property loan within the provisions of division 9 (commencing with §22000) of the Financial Code.

In the case of real property loans, a translation of the statement required by section 10240 of the Business and Professions Code (statement containing a list of all applicable fees and charges incurred in the transaction as well as interest rates) will satisfy the translation requirement.

Section 1632(c) provides that for the purposes of this section, the term “contract” means the document creating the rights and obligations of the parties, and includes any subsequent document making substantial changes in the rights or obligations of such parties. The term does not include, however, documents such as sales slips or statements, or invoices representing purchases made in add-on sales, credit card arrangements, or refinancing documents. Further, the term “contract” does not include home improvement contracts as defined in sections 7151.2 and 7159 of the Business and Professions Code or plans and specifications and descriptions of security taken pursuant to a contract for the installation of goods by a licensed contractor, if such home improvement or installation contract is incorporated into a contract described by subsection (a). Provisions further limiting the application of the chapter include subsections (d) and (l), which provide that no translated contract need be furnished where the consumer utilizes his own interpreter if such interpreter is fluent in both Spanish and English, and subsection (g), which specifies that section 1632 shall only apply to contracts entered into on or after July 1, 1976.

Section 1632 also enacts various provisions relating to the type of form contracts to be furnished, as well as notice that such translations are available. Subsection (g) requires the posting of a notice that such translations will be furnished upon request, and states that where a merchant uses several locations, only those where negotiations are conducted in Spanish are subject to the requirements of section 1632. Subsection (b) further provides that the translations which are furnished may be approved by the Department of Consumer Affairs, although subsection (h) requires the Department to approve acceptable language for contracts by January 1, 1976. Since subsection (b) does not require the use of approved forms, it appears that businessmen and merchants may use approved forms, or use their own translations, whether approved or not. Subsections (i) and (j) enact various provisions relating to government liability for errors in translations approved by the Department of Consumer Affairs and notice that a translation
has been approved. Subsection (k) provides for the Department to establish a fee schedule for approving translated contracts.

If a merchant fails to provide a translated contract in a case where one is required, the aggrieved party may rescind the contract, except that if the contract has been assigned, the consumer is required to make restitution to the assignor and to give notice to the assignee. Thereupon, the assignor is required to repurchase the contract from the assignee. Lastly, subsection (d) provides that in an action on a contract for which a translated copy $has$ been furnished, the English version shall determine the rights of the parties, but the Spanish translation shall be admissible to show that no contract was in fact reached because of a disparity in the terms of the two translations.

The practical effect of section 1632 is to provide a mechanism to insure that Spanish-speaking persons who enter into certain commonly used contracts fully understand the terms of the contracts they execute. Potential ramifications of this legislation may include (1) the expanded use of form contracts in certain cases, since translated copies may need to be furnished; and (2) a potential undercutting of the defense of a lack of mutual understanding of contract terms, which is often used by poverty lawyers to defeat contract actions against Spanish-speaking persons.

See Generally:

Business Associations; list of qualified bidders

Government Code §14810 (amended).
AB 3383 (McLennan); STATS 1974, Ch 643
Support: Department of General Services

Section 14810 of the Government Code has been amended to provide that the Department of General Services may remove from the list of qualified bidders, for a period not to exceed ninety days, any bidder who has demonstrated a lack of reliability in performing state contracts. The amended section also provides that a disqualified bidder may be returned to the list of qualified bidders at any time during the ninety day period upon demonstrating to the Department's satisfaction that the unreliability has been corrected.
COMMENT

Section 1890 of title 2 of the Administrative Code provides that in cases where the state purchases large quantities of given commodities each year, a list of qualified bidders will be established. With respect to future purchases of that commodity, only suppliers whose names appear on the list of qualified bidders will receive bid invitations from the state. In order to be placed on the list, the supplier must meet certain requirements established in section 1890, relating to his ability to adequately supply the state, to his inventory, and to his experience.

Section 1891 sets out a list of reasons for removing a bidder’s name from the list of qualified bidders, including the failure to respond to calls for bids or to inquiries as to the bidder’s continued interest in a particular contract, failure to perform a previously awarded contract, and changes in the bidder’s qualifications such that he no longer meets minimum qualification standards required by section 1890. Thus while it appears that the determination as to whether a contractor “lacks reliability” may present legal issues relating to the vagueness of the “reliability” standard, a court could hold that the standards set out by section 1891 establish sufficient guidelines for making the determination of unreliability.

While the removal of a bidder’s name from the list of qualified bidders without an administrative hearing appears to involve questions of procedural due process, such questions are generally resolved by striking a balance between the extent to which the injured party is deprived of a substantial right and the public interest in preserving the goals sought to be accomplished by the procedure. In view of an apparent judicial policy to construe public contracting procedures in favor of the public interest [See Comment, Due Process In Public Contracts: Pre-Award Hearings To Determine Responsibility Of Bidders, 5 PAC. L.J. 142, 148 (1974)], and because of the temporary nature of the ninety day suspension, it appears that this balance would be struck in favor of the suspension procedure.

See Generally:
1) 2 CAL. ADMIN. CODE §1890 (standards for prequalification to receive bid invitations).

Business Associations; private construction contracts—prevailing wage rates

Labor Code §1720.2 (new).
AB 3235 (Dunlap); STATS 1974, Ch 1027
Chapter 1027 adds section 1720.2 to the Labor Code to provide that private construction contracts shall be deemed to be "public works" contracts, for the purposes of the prevailing public works wage statutes, if all of the following conditions exist: (1) The construction contract is between private persons; (2) the property subject to the contract is privately owned; and (3) prior to the formation of the construction contract, the owner agrees to lease at least fifty percent of the assignable square feet of the property, upon completion of the construction, to the state or one of the state's political subdivisions.

The practical effect of the enactment of chapter 1027 is to provide that construction workers working on contracts which meet the specified criteria shall be subject to a wage determination by the public body based on the prevailing wage rate in the locality for similar work (§§1771, 1773), as well as other provisions relating to wages contained in article 2. These provisions also relate to travel and subsistence pay, inspection of payment records, and discriminatory practices.

**COMMENT**

Article XI, section 6 of the California Constitution provides that charter cities may make all rules and regulations relating to "municipal affairs." This provision has been interpreted to mean that a local regulation will be upheld, even if it conflicts with a general state law, if the subject matter of the regulation is truly a "municipal affair" [See City of Santa Clara v. Von Raesfeld, 3 Cal. 3d 239, 474 P.2d 976, 90 Cal. Rptr. 8 (1970)]. Thus insofar as the acceptance of a prevailing wage rate standard for payment under local construction contracts may be deemed to be a "municipal affair," it would appear that with respect to charter cities, local regulations conflicting with the new section 1720.2 would be upheld.

See Generally:

1) **CAL. LABOR CODE** art. 2 (commencing with §1770) (public works wage statutes).

**Business Associations; home solicitation contracts**

Civil Code §1689.7 (amended).

AB 3100 (Fenton); **STATS 1974, Ch 175**

(*Effective April 17, 1974*)

Support: Direct Selling Association

In order to clearly delineate the rights and liabilities of parties to home solicitation contracts in the event that such a contract is termi-
nated during the statutory cooling-off period, chapter 175 makes various changes in the wording of the "Notice of Cancellation," which must be included in every home solicitation contract. Section 1689.7 of the Civil Code, which relates to the "Notice of Cancellation," has been amended to provide that before the buyer's liability under the contract can be terminated, he must make the goods available to the seller. The seller must then repossess them within twenty days. If the buyer fails to make the goods available or, having agreed to return the goods, fails to do so, he remains liable for all the obligations under the contract. Prior to amendment, section 1689.7 simply allowed the buyer to dispose of the goods if the seller had failed to repossess them in a timely manner. The amendment brings the section into agreement with the "Notice of Cancellation" required by the Federal Trade Commission regulations on commercial practices, effective June 7, 1974. Chapter 175 also clarifies an apparent contradiction in the previous amendment to section 1689.7 [CAL. STATS. 1973, c. 554], which implied that even if the buyer did not agree to return the goods, he could retain or dispose of them without obligation.

See Generally:
2) 2 Witkin, SUMMARY OF CALIFORNIA LAW, Sales §263 (8th ed. 1973).

Business Associations; life care contracts

AB 3908 (Lockyer); STATS 1974, Ch 711
Support: California Association of Homes for the Aging

Chapter 711 amends section 16307 of the Welfare and Institutions Code, which specifies that life care contracts (contracts which provide for the transfer of property from an aged person in return for life care or care for a specified period exceeding one year) must contain certain information relating to the value of the property transferred and the financial responsibility of the organization providing the services. The amended section requires the contract to contain a notice that the contract may be cancelled by either party upon ninety days notice. In the event that such a contract is terminated under this provision, the payment formula set out in section 16308 would presumably be used to pay for services rendered by the life care facility and to refund to the transferor any property which exceeds the costs of such care. Prior to the enactment of chapter 711, life care contracts were terminable upon
proper notice by either party, but there was no requirement that a notice to this effect be included in the contract. In addition, chapter 711 makes several technical changes in section 16310 relating to the annual audits of the records kept by life care organizations and the furnishing of such audits to persons entering into life care agreements.

See Generally:
1) 22 CAL. ADMIN. CODE §33077 et seq. (additional regulations pertaining to "continuing care" and "life care" agreements).

**Business Associations; adverse claims to property held by financial institutions**

Financial Code §§1650, 7612, 7613, 7614, 11211 (repealed); §§1650, 7612, 11211 (new).

SB 1445 (Song); STATS 1974, Ch 136

Support: State Bar of California

Chapter 136 has been enacted to clearly specify the rights and responsibilities of financial institutions when such institutions are notified that a third party is claiming an interest in property which the institution is holding for another. This legislation brings the law relating to adverse claims to property in bank safety deposit boxes and to shares, investment certificates, and personal property held in state and federal savings and loan associations into conformity with the code sections relating to adverse claims to bank deposits. Whereas adverse claims to bank deposits must be ignored except in specified circumstances [CAL. FIN. CODE §952], the prior code sections afforded the financial institution considerably more discretion if the claim was related to property held in safety deposit boxes or to shares, investment certificates, or personal property held by federal or state savings and loan associations. Prior to the enactment of chapter 136, these institutions could, if they elected to do so, ignore the notice given by an adverse claimant unless the claimant procured a court order denying access to the record holder of the property or documents, or delivered a bond indemnifying the institution against liability for refusing access to the record owner of the property or documents. Until one of these requirements was met by the claimant, the institution could allow access to such property without incurring any liability, even when the name of the record holder was qualified by a descriptive title such as "agent" or "trustee." Further, even if the claimant delivered to the institution an affidavit stating that the record holder of the property or documents was acting in a fiduciary capacity relative to the claimant and was about to misappropriate the property, the institution could honor or ignore the af-
fidavit at its option. This statutory scheme was inherent in Financial Code Section 1650, covering bank safety deposit boxes, sections 7612, 7613, and 7614, covering state savings and loan associations, and section 11211, for federal savings and loan associations. Chapter 136 has repealed all of these sections and has added sections 1650, 7612, and 11211, which apply to banks, state savings and loan associations, and federal savings and loan associations, respectively. Under the new statutory scheme adverse claims against documents or property held by these institutions must be ignored unless the claimant produces a court order or delivers to the institution an affidavit stating that the record holder is acting in a fiduciary capacity relative to the claimant and is about to misappropriate the property. If an affidavit is used, access to the property may only be denied the record holder for a maximum period of three days to enable the claimant to get a court order. As under the previous scheme, if the requirements are not met, access may be allowed to the record owner even when he appears to be an agent for someone else. The practical effect of the legislation is to deny the financial institution discretion in the matter, since specific requirements for denying access must be met, and to remove the indemnity bond as a device to be used by the adverse claimant.

**COMMENT**

In view of case law holding that Congress has made a plenary, preemptive delegation of authority to regulate federal savings and loan associations to the Home Loan Bank Board, leaving no field for state supervision, it appears that insofar as section 11211 attempts to regulate federal savings and loan associations, it may be constitutionally suspect. [See California v. Coast Fed. Sav. & Loan Ass'n, 98 F. Supp. 311 (S.D. Cal. 1951); People v. Metrim Corp., 187 Cal. App. 2d 289, 9 Cal. Rptr. 584 (1960); Larwood Co. v. San Diego Fed. Sav. & Loan Ass'n, 185 Cal. App. 2d 450, 8 Cal. Rptr. 362 (1960)].

See Generally:

1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 322 (1973) (similar revision for bank deposits).

**Business Associations; motor vehicle conditional sales contracts**

Civil Code §2984.1 (amended).
AB 3161 (Johnson); STATS 1974, Ch 577

Civil Code Section 2984.1, as amended, requires that every conditional sales contract for the sale or, in specified instances, the lease
of a motor vehicle [CAL. CIV. CODE §2981] contain the following statement which must be signed or initialled by the buyer:

**WARNING—UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.**

s/s Buyer

While section 2984.1 required the warning to be included in applicable contracts prior to this amendment, it did not require that the buyer acknowledge the warning in any manner. Inclusion of the warning as stated shall constitute compliance with Vehicle Code Section 5604, which requires that a dealer, under specified circumstances, notify the buyer in writing that he is not covered by public liability or property damage insurance under the contract for the sale or lease of a motor vehicle.

Willful failure to comply with Civil Code Section 2984.1 is a misdemeanor (§2983.6). Failure to include the warning may also render the contract void (§1667). It was stated in *Smith v. Bach* [183 Cal. 259, 191 P. 14 (1920)] that where a statute requires the making of a contract in a certain manner, the contract will be void if made in any other manner. Other cases have stated that where a statute prohibits or attaches a penalty to the doing of an act, the act is void notwithstanding that the statute does not expressly pronounce it so [Bourke v. Frisk, 92 Cal. App. 2d 23, 206 P.2d 407 (1949); Miller v. California Roofing Co., 55 Cal. App. 2d 136, 130 P.2d 740 (1942)]. In addition, failure to obtain the signature or initial of the buyer following the warning may constitute a violation of Civil Code Section 2982(a), which prohibits the execution of a contract that is not completely filled out. Civil Code Section 2983, which defines the effect of a violation of section 2982(a), might then render the contract unenforceable except by a bona fide purchaser, assignee, or pledgee for value.

Tort liability may also result from a failure to comply with section 2984.1. The California Supreme Court has ruled in *Dana v. Sutton Motor Sales* [56 Cal. 2d 284, 363 P.2d 881, 14 Cal. Rptr. 649 (1961)] that a dealer's failure to comply with the notification requirements of Vehicle Code Section 5604 is evidence of a breach of duty and negligence. It would appear that in so far as a violation of Civil Code Section 2984.1 also constitutes a violation of Vehicle Code Section 5604, similar liability would obtain.

See Generally:

Business Associations; contractor's liability for acts of God

AB 1345 (Knox); STATS 1974, Ch 1348
Support: Associated General Contractors

Section 4150 of the Government Code has been amended to provide that contracts entered into by public agencies shall not require the contractor to be liable for the repair of damage to the work beyond five percent of the contracted amount when such damage is determined to be proximately caused by an "act of God," provided however, that the work which is damaged is built in accordance with accepted building standards and conforms to the plans and specifications accepted by the awarding authority. Prior to amendment, section 4150 stated that the contractor could not be held liable for such damage, and thus the practical effect of the amendment is to impose potential liability on the contractor up to the new statutory limits. No change has been made in the public agency's right to include contract provisions requiring the contractor to insure against such loss. If such insurance is required, the amended section 4150 specifies that the request for bids shall set forth the amount of insurance required, and evidence of such insurance shall be required before the execution of the contract. Further, the public agency may still include provisions allowing the termination of the contract if damage due to an "act of God" occurs.

Section 4151, which defines an "act of God," has been amended to provide that only earthquakes of a magnitude exceeding 3.5 on the Richter Scale and tidal waves shall constitute "acts of God," and to delete language requiring a declaration of a state of emergency or disaster by the President or the Governor. Taken together, the amendments to sections 4150 and 4151 represent a shift in the respective responsibilities of the contractor and public agency. On the one hand, contractors are now liable, up to statutory limits, for damages caused by "acts of God." On the other hand, a declaration of emergency by the Governor or President is no longer required for purposes of excusing the contractor for damages beyond these statutory limits.

Business Associations; contractor's deposits

Business and Professions Code §7071.11 (amended); Labor Code §96.5 (new).
AB 1320 (Ralph); STATS 1974, Ch 201
Support: State Building and Construction Trades Council of California

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Section 7071.11 of the Business and Professions Code, which allows claims by aggrieved parties against the contractor's bond or cash deposit required by section 7071.6, has been amended to provide a mechanism for adjudication and payment of claims against the cash deposit without a court order when the claim is brought by an employee of the contractor and concerns wages or fringe benefits arising out of the employment. The amendment provides that the Labor Commissioner shall conduct hearings and shall notify the registrar holding the cash deposit of findings in favor of the employee. Unless the licensed contractor notifies the registrar within ten days of the determination of the findings that he intends to seek judicial review, the registrar is to pay the claim. If the contractor so notifies the registrar, but fails to seek judicial review within sixty days of the original findings, the registrar shall likewise make payment to the claimant.

Section 96.5 has been added to the Labor Code and empowers the Labor Commissioner to hold hearings pursuant to section 7071.11 of the Business and Professions Code. Further, the new section provides that the Labor Commissioner, having made findings, shall certify such findings in writing to the appropriate court to be considered in the resolution of subsequent litigation based on the claim. Prior to these amendments there was no statutory authority for payment by the registrar of claims against the cash deposit in the absence of a court order, although if a bond was used the surety could settle with the claimant without a court order if it was done in good faith. Thus the practical effect of the amendments is to expedite the adjudication of the claim when it is made by an employee or employee's organization against a cash deposit. This strengthens past policy of making the employee a preferred claimant, even though the cash deposit is stated to be for the benefit of all persons damaged as a result of a contractor's violation or fraud [CAL. BUS. & PROF. CODE §7071.5].

See Generally:
1) 51 Ops. ATT'Y GEN. 148 (1968) (cash deposit has same effect as bond).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 254 (1973) (action at law on cash deposit).
3) 16 CAL. ADMIN. CODE ch. 8 (commencing with §790) (bonds).

Business Associations; swimming pool contracts

Civil Code §1730.5 (new).
SB 1836 (Zenovich); STATS 1974, Ch 1228
Support: Registrar of Contractors

In order to encourage complete and satisfactory performance of swim-
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regarding pool construction contracts, section 1730.5 has been added to the Civil Code to establish specific requirements relating to payments made for work performed under such contracts. Subsection (a) provides that every such contract shall include a schedule of payments, and subsection (b) specifies that if such a schedule provides for a downpayment prior to the commencement of construction, the downpayment shall not exceed $50 or one percent of the contract price, whichever is greater. An exception to this downpayment limit is made by subsection (c), which provides that if the contractor furnishes completion and performance bonds covering 100 percent of the work, the provisions of subsection (b) do not apply. Subsection (d) provides that in no event shall the contract call for payment in excess of forty percent of the contract price prior to the completion of the reinforcing steel and preparatory to the placement of the concrete or gunite. In order to encourage strict compliance with these provisions, subsection (e) provides that any work performed in violation of the new section shall be a misdemeanor punishable by a fine or imprisonment or both.

See Generally:

Business Associations; court approval of minor's contracts

Civil Code §36 (amended).
SB 2048 (Zenovich); Stats 1974, Ch 771
Support: State Bar of California; Beverly Hills Bar Association; Association of Motion Picture and Television Producers

Section 36 of the Civil Code, which lists several exceptions to the general rule that contracts entered into by minors are voidable at the minor's option until a reasonable time after the minor attains his majority, has been amended to expand the scope of those contracts which may be made binding by court approval and to revise the procedures for such approval. Section 36(a)(2), which provides that a minor may not disaffirm a court-approved contract for the rendering of artistic or creative services, has been amended to include contracts under which a minor agrees to purchase, secure, sell, lease, license, or dispose of literary, dramatic, or musical properties. Further, the provisions relating to court approval of such contracts have been amended to provide that in cases where the minor neither resides nor is employed within the state, such a contract may be approved, and thus made binding on the minor, by the superior court in the county in which any party to the
contract maintains its principal office in this state. Section 36(a)(3), which relates to court approval of a minor's contracts to render athletic, as opposed to artistic services, has undergone identical revision. The practical effect of these latter amendments on the court approval procedures is to allow court approval of contracts entered into by minors who do not reside or work in California, and hence make them binding. Prior to amendment only courts located in the county in which the minor resided or worked had jurisdiction to approve a minor's contract.

See Generally:

Business Associations; retail installment accounts

Civil Code §1810.6 (amended).
AB 3938 (Deddeh); Stats 1974, Ch 563
Support: California Retailers' Association

Title 2 (commencing with §1801) of the Civil Code, commonly known as the Unruh Act, contains provisions relating to various financing devices commonly used in the consummation of retail installment sales. One such device is the retail installment contract, which is generally an agreement to pay for goods delivered in a number of monthly payments [See Cal. Civ. Code §1802.6]. In many cases, such contracts contain provisions authorizing add-on sales, whereby the price of a subsequent purchase is added to the original contract and the amount of the monthly payments and finance charges is increased proportionately [See Cal. Civ. Code §1802.1]. Another commonly used financing device is the retail installment account (charge account), whereby the purchaser promises to pay for any goods he may buy, the purchase price of individual items being added to a continuing account [See Cal. Civ. Code §1802.7].

One problem which arose, with regard to both installment contracts allowing add-on sales and installment accounts, was how to allocate the monthly payments with respect to the purchase of any one item, since the consumer ultimately owed a lump sum under the contract or account. In cases where the seller retained a security interest in all the items until the full contract or account price was paid, all the items could be repossessed upon any default in payment, since the monthly payments had not been applied to the purchase of any one item.
In response to this problem section 1808.2 was added in 1959 to set up a payment allocation system for payments made under installment contracts [Cal. Stats. 1959, c. 201, at 2101]. Further, section 1810.6 specified that these provisions were also applicable to payments made under retail installment accounts. In 1970, however, section 1808.2 was amended to provide for certain disclosure requirements which were intended to apply to installment contracts [See Cal. Civ. Code §1808.2, as amended, Cal. Stats. 1970, c. 546, at 1048], but not to retail installment accounts.

Thus section 1810.6 has now been amended to include a payment allocation system applicable only to payments made under installment accounts, and to delete the language specifying that section 1808.2 applies to such accounts. The amended section provides that when the account agreement provides that the seller retains a security interest in the goods until they are fully paid for, the payments received shall be allocated to all the various purchases in the same proportion as the cash sale prices bear to one another. However, any downpayment made on a specific purchase shall be allocated entirely to that purchase. Thus the apparent legislative intent in enacting chapter 563 has been to create a specific payment allocation system for retail installment accounts, and to avoid any possible confusion which might result from an interpretation that the disclosure requirements of section 1808.2 apply to agreements covered by section 1810.6. The legislation does not, however, alter the right of the creditor to repossess all the items sold under retail accounts or add-on contracts upon default in payment, in those cases where the seller retains a security interest in the goods.

Business Associations

Business and Professions Code Chapter 1.5 (commencing with §900) (repealed); §§1242.6, 2811.5 (new); §§1242.6, 2725, 2726, 2811, 2892.5 (amended).

AB 3017 (Duffy); Stats 1974, Ch 923

AB 3124 (Duffy); Stats 1974, Ch 355

AB 3884 (Alatorre); Stats 1974, Ch 838

SB 943 (Marks); Stats 1973, Ch 748

Support: Board of Nursing Education and Nurse Registration

During the second year of the 1973-74 regular session, the legislature responded affirmatively to a number of problems which had arisen relating to the nursing profession. One such problem was how to implement, in an equitable manner, the continuing education requirements
set up by prior legislation [See CAL. BUS. & PROF. CODE §§900-905], since many nurses alleged that there were too few courses available which satisfied the continuing education requirements. In response to this problem, chapter 923 has been enacted to add section 2811.5 to the Business and Professions Code to provide that until June 30, 1978, nurses applying for license renewal shall be entitled to a standard form of recognition upon a showing that the nurse has informed herself of current developments in the registered nurse field. Such recognition will probably be in the form of a suffix attached to the standard nursing designations, such as RN(a) or LVN(a) [A.B. 3017, 1973-74 Regular Session, as amended, Feb. 4, 1974]. After June 30, 1978, such a showing is required before the license may be renewed. Section 2811.5 also sets out certain guidelines establishing standards for continuing education requirements. Section 2892.5 has been amended to provide a similar statutory scheme relating to license renewal and continuing education of licensed vocational nurses. The practical effect of the enactment of chapter 923 is to provide an incentive in the form of recognition conferred by the licensing boards for keeping abreast of current developments in the nursing field while such education is still optional, and to delay the initiation of mandatory continuing education requirements until 1978.

The legislature also apparently recognized that there exist certain overlapping functions between doctors and nurses, and thus passed legislation aimed at providing statutory authority for the performance of certain health care procedures in which nurses commonly participate, but which in the past were not specified as activities to be performed by nurses. Chapter 355 amends section 2725 of the Business and Professions Code to include within the definition of the "practice of nursing" a list of permitted activities in which nurses may participate. These activities include (1) the administration of medications prescribed by physicians and dentists; (2) the administration of skin tests and immunizations, as well as the withdrawal of blood from veins and arteries; (3) disease prevention and restorative procedures; and (4) the observation of symptoms of illness and the subsequent implementation of appropriate standardized procedures, which are defined as policies or protocols developed through collaboration between medical administrators, physicians, and nurses. In addition, section 2726 has been amended to provide that except as otherwise specified, no authority to practice medicine has been conferred on nurses.

Prior to amendment section 2725 provided a broad definition of the "practice of nursing," but contained no authorization for participation
by nurses in any specific activities. Further, section 2726 provided that no authority to practice medicine was thereby conferred. Other examples of legislation broadening the scope of permitted activities for nurses include chapter 748, which adds section 1242.6 to the Business and Professions Code to specifically authorize the withdrawal of blood by registered nurses, and chapter 838, which amends the same section to provide similar authority to licensed vocational nurses.

Such legislation designed to broaden the scope of the activities in which nurses may participate has been responsive to two general problems. The first problem has been that the broad definition of "nursing" contained in section 2725 prior to its amendment did little to delineate the permissible limits of nursing activities. Arterial puncture, for example, could be held to be an activity constituting the practice of medicine, in the absence of statutory authorization for nurses to perform such procedures. Thus a nurse could be disciplined for the unlicensed practice of medicine under section 2761, even if such procedures were commonly practiced by nurses. Legislation designed to delineate the scope of permitted nursing procedures attempts to remove the threat of such disciplinary action in cases where the functions of the nurse and the physician overlap. The second problem has been that physicians could be disciplined, and presumably subject to malpractice liability, for delegating to nurses functions which could be construed to be within the scope of the practice of medicine. In such cases the nurse would be unauthorized to perform such procedures, and the employer-doctor could be disciplined under section 2392 of the Business and Professions Code. Thus legislation aimed at broadening the scope of activities in which nurses may participate is designed to remove the possibility of disciplinary proceedings and potential civil liability in cases where, prior to the legislation, the doctor was in effect delegating responsibility for the "practice of medicine" to unlicensed persons.

**Business Associations; collection agencies**

Business and Professions Code §6854 (amended).

AB 3788 (Papan); STATS 1974, Ch 1116

It has become a common practice throughout the United States for personal property brokers in different states to enter into agreements whereby a broker in one state collects a debt due to a broker in another state when the debtor has moved from one state to another. The collecting broker receives a standard fee for this service, and thus a reciprocal system of debt collection has come into being.
California personal property brokers have been unable to participate in this reciprocal system for several reasons. Under section 6852 of the Business and Professions Code, the term "collection agency," for purposes of state licensing statutes, includes any person who, as a part of his business, collects claims due to another [See Review of Selected 1974 California Legislation, this volume at 179]. Personal property brokers were exempted from this definition under section 6854 (e), but only when making collections for another person of common ownership or affiliated through corporate control. Thus, unless California personal property brokers were affiliated with the out-of-state brokers, they could not collect debts owed to the out-of-state brokers without obtaining a license as a collection agency. The complicated procedures for obtaining licenses as collection agencies made it impractical for personal property brokers to apply for such licenses.

In response to this problem, section 6854(e) has been amended to delete the qualification that personal property brokers are only exempted from collection agency licensing statutes when making collections for other persons of common ownership or affiliated through corporate control. Thus California brokers may collect debts due to out-of-state brokers without being licensed as collection agencies, and may therefore participate in the reciprocal system whereby out-of-state brokers will collect debts owed to California brokers.

Business Associations; collection agencies

Business and Professions Code §6920.1 (new); §§6855, 6886, 6912, 6949.1, 6949.2 (amended).

AB 1449 (Keene); Stats 1974, Ch 894

Section 6852 of the Business and Professions Code defines a "collection agency," for the purposes of state licensing requirements, as any person who participates in the solicitation or collection of claims owed or due to another. Prior to amendment, however, section 6855 defined a "claim" as an obligation arising under a contract for the payment of money, and thus collection agencies were not authorized by statute to collect monies due other than those monies due under contracts. To remedy this problem, section 6855 has been amended to provide that a "claim" shall include obligations arising under a contract or judgments for the payment of money. Thus, the practical effect of this amendment is to provide statutory authorization for collection agencies to collect debts arising out of court judgments, such as personal injury awards or child support payments.

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In addition to this amendment, chapter 894 makes various other changes in the Collection Agency Act [CAL. BUS. & PROF. CODE ch. 8 (commencing with §6850)]. Section 6886, which contains requirements to be met by persons who wish to receive qualification certificates to manage collection agencies, has been amended to provide that such an applicant must have actively engaged in the collection agency business as a registered employee of a collection agency for at least one of the five years preceding his application for an examination qualification certificate. Further, section 6949.1, which provides that the lapsing, suspension, or surrender of the license of any collection agency shall not deprive the Director of Consumer Affairs of authority to proceed with disciplinary action against such a licensee, has been amended to apply also to managers holding certificates. Finally, section 6949.2 has undergone technical revision pertaining to petitions for reinstatement of Motor Vehicles as mobilehome dealers. Thus a person who and employee registration when such applications have been denied for certain specified offenses.

See Generally:
1) 16 CAL. ADMIN. CODE §600 et seq. (other regulations pertaining to collection agencies).

Business Associations; mobilehome sales

Business and Professions Code §§10131.6, 10131.7, 10177.2 (new); §10132 (amended).
AB 2194 (Maddy); STATS 1974, Ch 1351 (Effective July 1, 1975)
Support: California Real Estate Association; Department of Real Estate; Department of Motor Vehicles; Western Mobilehome Park Association
Opposition: Trailer Coach Association

Prior to the enactment of chapter 1351, real estate brokers were not permitted to sell mobilehomes unless they were licensed by the Department of Motor Vehicles as mobilehome dealers. Thus a person who desired to switch from a conventional home to a mobilehome could employ a realtor to sell the conventional home, but could obtain the mobilehome only through a dealer. Similarly, persons wishing to move from a mobilehome to a conventional home were often required to sell the mobilehome through a dealer and then employ a realtor to consummate the purchase of the conventional home. To remedy these
problems, chapter 1351 has been enacted to allow real estate brokers to sell mobilehomes under certain specified circumstances.

Section 10131.6 has been added to the Business and Professions Code to provide that licensed real estate brokers may buy or sell, or solicit buyers or sellers of, mobilehomes which have been registered with the Department of Motor Vehicles for over one year (used mobilehomes). However, unless the broker is also licensed as a mobilehome dealer, he may not maintain any place of business where two or more mobilehomes are offered for sale. In order to closely regulate the activities of real estate brokers who sell mobilehomes pursuant to this statutory scheme, section 10131.7 has been added to prohibit (1) certain activities relating to the advertisement of mobilehomes which are not legally in place on a lot leased for human habitation or which have been withdrawn from sale, (2) the advertisement of the mobilehome as new, and (3) other technical matters such as transfer fees and required equipment. Section 10177.2 has been added to provide that the Real Estate Commissioner may revoke or suspend the license of any real estate broker who engages in certain specified activities, including false and knowing concealment of a material fact relating to the sale of a mobilehome, knowing participation in the acquisition or disposal of a stolen mobilehome, and other related offenses. The practical effect of this legislation will be to obviate the necessity of dealing through both a mobilehome dealer and a real estate broker, under specified circumstances, since the real estate broker may now consummate the entire transaction. Further, persons desiring to sell mobilehomes may now list and sell these units through the multiple listing services. Lastly, it should be noted that section 5 of chapter 1351 specifically states that the legislature, in passing Assembly Bill 2194, did not intend in any way to alter the status of mobilehomes as personal property.

Business Associations; immigration counselling

Penal Code Chapter 3 (commencing with §653.55) (new).
AB 2701 (Alatorre); STATS 1974, Ch 999
Support: State Bar of California

In order to regulate the activities of persons who engage in the business of preparing immigration documents or rendering advice bearing on immigration matters, chapter 3 (commencing with §653.55) has been added to the Penal Code. The new law subjects persons who
knowingly make false or misleading statements in the preparation of immigration matters for others to criminal and civil penalties.

Sections 653.55 and 653.56 provide that any person, firm, or other association which accepts any form of compensation and which knowingly makes a false or misleading statement in giving advice or preparing any application, document, or petition which bears on immigration proceedings, and which is detrimentally relied upon by another, shall be guilty of a misdemeanor. Section 653.57 provides that any violation of these provisions may be enjoined by the Attorney General, district attorney, county counsel, or city attorney. Section 653.58 specifies fines for the violation of such an injunction. In addition, sections 653.59 and 653.60 provide that any person who violates these provisions shall be subject to a civil fine for each violation and that any person damaged by such a violation may bring an action for damages. Presumably, the new chapter would also allow the Attorney General to proceed against any persons making false or misleading statements as part of advertised offers to sell immigration consultation services. Further, these remedies are specifically stated to be cumulative to each other and to any other remedies provided by law.

COMMENT

In view of recent case law holding that the power to regulate immigration and naturalization is vested exclusively in the United States Congress [See Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 456 P.2d 645, 79 Cal. Rptr. 77 (1969)], it could be argued that insofar as it attempts state legislation in this preempted area, chapter 999 may be constitutionally suspect.

See Generally:
1) U.S. Const. art. 1, §8; 8 U.S.C. §1103(a) (1970) (Congress, through the Attorney General, shall have the power to make and enforce all laws relating to immigration and naturalization).

Business Associations; notaries public—advertisements

Government Code §8219.5 (new).
AB 286 (Garcia); STATS 1974, Ch 245

Section 8219.5 has been added to the Government Code to enact several provisions relating to the advertising of services by notaries public. The section provides that every notary public who advertises in Spanish that he is a notario público by any signs or means of written communication shall post a notice stating that a notary public who is

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not a member of the State Bar may not give legal advice. Further, the notice must set forth the statutory fees which the notary public may charge for services.

If a notary public fails to comply with the provisions of this section, the Secretary of State is required to suspend the commission of such notary for a period of not less than one year. On the third offense the notary's license will be revoked permanently. Prior to the enactment of section 8219.5, there was no such notice requirement, and abuses occurred due to the fact that in Mexico *notario publico* denotes a person who, among other functions, may render legal advice.

**Business Associations; memorial societies**

Business and Professions Code §§7609, 7615, 7616 (amended).

AB 1828 (Badham); STATS 1974, Ch 1512

Support: Board of Funeral Directors

Section 7615 of the Business and Professions Code has been amended to provide that a person or association is a "funeral director" for the purposes of state licensing requirements when engaged in *any one* of the following activities: (1) preparing for or supervising the transportation, burial, or disposal of human remains; (2) maintaining an establishment for the preparation for transportation or disposal of human remains; or (3) using in connection with the establishment's name certain terms implying that its business is that of a funeral director. Prior to amendment, the section required the organization to be engaged in all three activities before it qualified as a "funeral director." Further, an organization which merely engaged in activities relating to the transportation of human remains did not satisfy any of the requirements of section 7615, and thus did not need to be licensed as a "funeral director."

Section 7616, which defines a "funeral establishment" for the purposes of state licensing requirements, has been amended to provide that a business is a "funeral establishment" if it maintains either a room for the storage of human remains or a preparation room equipped for the preparation, sanitation, or embalming of the remains. Further, the amended section provides that there is no requirement that the establishment conduct its financial transactions at the location where it maintains such facilities. Thus, the amendment deletes the requirement of a chapel, and maintenance of either a storage or preparation room will now qualify the business as a "funeral establishment."

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7609 has undergone technical revisions providing that certain hospitals and cemetery concerns are exempted from the operation of chapter 1512.

**COMMENT**

In recent years several “memorial societies” have been created which offer the public alternatives to the high cost of conventional funerals. These societies perform few of the functions of traditional funeral directors, but rather offer a low cost package of services, including picking up the body, cremating it, and disposing of the ashes. Since these organizations did not meet all three of the requirements of the prior section 7615 or operate a chapel as required by the prior section 7616, they were not “funeral directors” or operators of “funeral establishments” and thus were not required to be licensed by the Board of Funeral Directors and Embalmers. Since these societies do engage in the transportation of human remains and also maintain “storage rooms” within the amended section 7616, the amendments apparently bring such organizations under the auspices of the Board. It would appear that clashes of interest could result from legislating that such societies now be required to obtain licenses from a board which has traditionally been dominated by representatives of the conventional funeral industry and to which these societies offer serious economic competition. On the other hand, if such societies are to be licensed as “funeral establishments,” then presumably their members can qualify as members of the Board as provided by law in sections 7601 and 7602 of the Business and Professions Code, and thus act to protect their own legitimate interests.

**Business Associations; automobile leasing advertisements—disclosure**

Civil Code §2985.71 (new); §2985.81 (amended).

AB 3754 (Ralph); STATS 1974, Ch 1110

Support: California Automobile Dealers Association; Automobile Leasing Association; Southern California Automobile Leasing Association

Opposition: Automotive Leasing Association

In order to assure that persons entering into automobile leasing contracts are fully aware of all the potential obligations arising under such contracts, section 2985.71 has been added to the Civil Code to require certain information to be disclosed when automobile leasing contracts
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are advertised. Section 2985.71 requires that whenever a solicitation to enter into an automobile leasing contract under the provisions of the Moscone Automobile Leasing Act of 1969 [CAL. CIV. CODE §2985.7 et seq.] refers to the amount of the periodic payment, the advertisement must also contain (1) the value of the vehicle, (2) the maximum amount for which the lessee could be held liable at the end of the lease period, (3) the amount of any required cash deposit or pre-payment, and (4) the term of the lease expressed in months. Subsection (b) provides that a failure to comply with the provisions of this section shall not affect the validity of the leasing contract, and further specifies that no owner or employee of any advertising medium shall incur any liability because of violations of the disclosure requirement.

Chapter 1110 also amends section 2985.81 of the Civil Code, which prohibits the enforcement of leasing agreements wherein a lien is attached to any property other than the subject vehicle to secure the performance of obligations under the contract. The amended section provides that these provisions do not apply to security deposits, cash prepayments, or advance payments of rent. This amendment is specifically stated to be declaratory of existing law.

COMMENT

Under both federal and state law, when a price is mentioned in an advertisement for the sale of an automobile, the advertiser is required to disclose certain information relating to the total deferred payment price of the automobile, the amount of interest charged, and the total number of payments to be due under the contract [See 15 U.S.C. §1664 (1970); CAL. VEHICLE CODE §§11713, 11713.1]. However, these provisions only apply to advertisements relating to the sale of automobiles, and prior to the enactment of chapter 1110, there were no similar provisions relating to the advertisement of automobile leasing arrangements. In enacting chapter 1110 the legislature has taken affirmative action against the alleged unethical business practices of some automobile lessors who advertise automobile leasing arrangements which contain undisclosed balloon payments, interest, and service charges. Although chapter 1110 specifies that a violation of its provisions in the advertisement does not affect the validity of the leasing arrangement, it would appear that the Attorney General could enjoin violations of the disclosure law, as well as seek the imposition of civil penalties on offenders, under his power to enjoin acts of unfair competition [See CAL. CIV. CODE §3369]. Further, if the disclosures are

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not contained in the written contract, present law allows rescission of the leasing contract [See CAL. CIV. CODE §2985.9].

Business Associations; filing of documents

Corporations Code §§127, 3301 (amended);
Government Code §§12187, 12189, 12201, 12202, 12202.5, 12203, 12204.5 (repealed); §§12201, 12202, 12203, 12209 (new);
§§12164, 12185, 12186, 12200, 12204, 12205 (amended).
AB 2070 (Boatwright); STATS 1974, Ch 41
Support: Secretary of State

Prior to the enactment of chapter 41, the Corporations Code defined fee schedules for the filing of corporate documents based upon a complex set of mathematical computations. Chapter 41 eliminates these procedures and institutes a flat fee schedule for corporate documents filed with the Secretary of State. These fee schedule changes apply to the filing of articles of incorporation, amendments to articles, consolidation or merger agreements, and certificates of merger proceedings required by section 4110 of the Corporations Code.

In a further effort to streamline filing procedures, amended section 12164 of the Government Code no longer includes subdivision (b), which required the Secretary to record various documents. This procedure is no longer necessary since the microfilm now made at the time of filing with the Secretary of State is of itself an adequate record. That is, the microfilm filing system initiated by the Secretary of State has proven to be an adequate means of keeping records, and thus the need for a separate recording system has ceased. Complementing this deletion, Government Code Sections 12187, 12189, and 12204.5, which set up fees for the recording of miscellaneous papers, contracts for the sale of railway equipment, and amendments to articles of incorporation, have been repealed. Sections 12204, 12185, 12186, and 12205 of the Government Code and sections 127 and 3301 of the Corporations Code have also undergone technical revisions modifying fee amounts and related details. The addition of Government Code Section 12209 provides for free comparison of a document with the original if the filing fee is over $15. The practical effect of this legislation is to institute comprehensive changes in the procedures and fee schedules involved in the filing of corporate documents. While the flat fee schedules should simplify the computation of required fees, relevant code sections should be consulted prior to the filing of such documents.
Business Associations; rights of limited partners

Corporations Code §15532 (new).
SB 1247 (Carpenter); STATS 1974, Ch 729  
Support: Department of Corporations; Attorney General

Section 15532 has been added to the Corporations Code to provide that upon the failure of a partnership to comply with section 15510 (a) and (b) of the Corporations Code (relating to a limited partner's rights to have access to the partnership's books and to information regarding the partnership), or when the partnership fails to provide to the limited partner the rights guaranteed by the certificate of limited partnership, the partner may complain to the Attorney General, who is authorized to demand a response to the complaint from the partnership. If the response is not forthcoming within thirty days or is unsatisfactory, and the private enforcement of the partner's rights would be so burdensome or costly that to enforce them would be impractical, the Attorney General may intervene in or institute whatever proceedings are necessary to protect the partner's rights. The relief sought may include injunctions, dissolution of the partnership, appointment of receivers, or any other appropriate relief. All persons or entities involved may be joined as parties. The practical effect of the addition of section 15532 to the Corporations Code is to afford to limited partners the same enforcement of rights by the Attorney General as is afforded to corporate shareholders by section 2240 of the Corporations Code.

See Generally:

Business Associations; check seller's and cashier's bond

Financial Code §12206.1 (new).
SB 1957 (Cusanovich); STATS 1974, Ch 442

Prior to the enactment of chapter 442, section 12206 of the Financial Code required check sellers and cashers (defined by section 12002 as persons who for compensation sell or cash checks, drafts, or other commercial paper or who receive money from a principal for the purpose of paying the principal's bills or accounts) to obtain and file with the Commissioner of Corporations a surety bond in the amount of $10,000. Chapter 442 adds section 12206.1 to the Financial Code to provide that in lieu of this surety bond, a check cashier or seller may deliver to the Commissioner a $10,000 cash bond, evidence of deposit.
of the same amount in a federally insured bank, or investment certifi-
cates in the same amount issued by a federally insured savings and loan
association. Thus the practical effect of the addition of section 12206.1
is to authorize these three alternatives to the surety bond as methods of
satisfying the statutory bonding requirement and bring this statute into
agreement with equivalent statutory provisions for other licensees such
as escrow agents [See CAL. FIN. CODE §1702.1].

See Generally:
1) 10 CAL. ADMIN. CODE §1772 et seq. (additional regulations pertaining to check
sellers and cashers).

Business Associations; cooperative bargaining associations

Food and Agricultural Code §§54432, 54433, 54434, 54435 (new);
§54431 (amended).
SB 1941 (Way); STATS 1974, Ch 510
Support: California Farm Bureau Federation

In order to implement and strengthen the right of farmers to belong
to cooperative bargaining associations, as expressed in section 54402
of the Food and Agricultural Code, chapter 510 has been enacted to
expand the scope of unfair trade practice regulation pertaining to busi-
ness transacted with such cooperative associations. Section 54431 of
the Food and Agricultural Code, which specifies that certain practices
which are detrimental to cooperative bargaining associations are unfair
trade practices, has been amended to include subdivision (e), which
prohibits food processors, handlers, and distributors from refusing to
negotiate or bargain with such an association. This prohibition only
applies, however, when the cooperative bargaining association meets
certain specified requirements relating to its financial and contractual
status and to its position as a representative of a sufficient number of
producers of a given commodity to make it an effective bargaining
agent. Section 54434 has been added to provide that the provisions of
the new subdivision (e) do not apply to business transacted by the as-
sociation with its own members, and section 54435 provides that the
new provisions do not require actual agreement or negotiation for any
specific period of time. Further, section 54432 has been added to pro-
vide that the provisions of subdivision (e) only apply to processors,
handlers, and distributors who refuse to bargain or negotiate with co-
operative bargaining associations which represent producers with whom
a prior course of dealing has been established. These provisions ap-
ply to all agricultural commodities except milk, cotton, and cottonseed
[CAL. FOOD & AGRIC. CODE §54401].

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In order to provide processors, handlers, and distributors with reciprocal rights, section 54433 has been enacted to provide that cooperative bargaining associations which come within the scope of section 54431(e) may not refuse to bargain or negotiate with such persons.

See Generally:
1) CAL. FOOD & AGRIC. CODE §§54461, 54462 (criminal and civil penalties for participation in unfair trade practices).

Business Associations; corporate powers of credit unions

Financial Code §§14850, 14905, 15205 (amended).
SB 1612 (Cusanovich); STATS 1974, Ch 740
Support: California Credit Union League

Prior to this amendment, section 14850 of the Financial Code provided that no credit union could make any gift or donation unless such action was first approved by a resolution of the board of directors and by a majority of the credit union's members. An exception to these requirements was made under specified circumstances when such gifts or donations did not exceed $100, in which case only board approval was required. Chapter 740 amends section 14850 to delete this special exception and to provide that any gift or donation must be shown to be in the best interests of the credit union and be approved by the board of directors and a majority of the members present at any meeting of the shareholders for which notice of the intended gift or donation has been given.

Section 14905 has been amended to provide that a loan made by a credit union may specify that shares are entitled to a proportionate part prescribed by section 14907. The practical effect of this amendment is to provide that a loan may be secured by an endorsed note as provided by section 14907(a). Prior to amendment section 14905 provided that such a loan could only be secured by a government guarantee of the payment of interest and principal or by funds invested by the member in the credit union (§§14907(b), 14907(c)). In the event that such a loan is secured by an endorsed note, the amended section 14905 also contains provisions pertaining to required financial reports of endorsers and statutory maximum loan limits.

Section 15205 has been amended to provide that the bylaws of a credit union which exceeds $5,000 may be secured in a manner precluding dividends even when such shares are withdrawn during the dividend period. Prior to amendment, section 15205 authorized a div-
See Generally:

1) 10 Cal. Admin. Code §927 (credit union dividends), §§970-979 (additional regulations pertaining to loans).

**Business Associations; health care plans**

Government Code §§12535.1, 12538.6, 12538.7, 12538.8, 12539.5, 12539.6, 12539.7 (new); §§12530, 12531, 12532, 12534, 12535, 12538.3, 12538.4, 12538.5, 12539, 12539.1, 12539.3 (amended).

AB 3920 (Knox); Stats 1974, Ch 1144

In an effort to provide for closer supervision of health plan organizations, chapter 1144 has been enacted to provide the Attorney General with increased supervisory control over the management and business practices of such organizations. Representative of the expanded regulatory authority vested in the Attorney General by chapter 1144 are the provisions in sections 12534, 12535.1, and 12538.5 which empower the Attorney General to prohibit further enrollment of health plan members when the organization has engaged in prohibited advertising practices, and to appoint a conservator or make rules and regulations when he deems such action necessary for the protection of the public. In order to provide for closer scrutiny of the financial affairs of health plan organizations, sections 12538.6, 12538.7, 12539.1, 12539.3, and 12539.5 now contain provisions initiating a system of required reporting of the financial affairs of health plan organizations. Further, sections 12538.3 and 12538.8 now include provisions requiring the books of management, consultant, and solicitation companies which pertain to the health plan's operations to be available to the Attorney General for inspection. Lastly, section 12539.7 has been added to provide a list of specified causes for which subscription to a health care service plan may be terminated by the health plan organization.

See Generally:


**Business Associations; medical referrals**


SB 2243 (Roberti); Stats 1974, Ch 1333

Prior to the enactment of chapter 1333, section 445 of the Health and Safety Code provided that no person, firm, association, or corpora-
tion could charge a fee in return for referring another person to a physician, hospital, or other health-related facility for treatment. In addition, physicians and health-related facilities were specifically prohibited from entering into any contract for the treatment of persons referred by a medical referral service, if the medical referral service would be prohibited under California law. A special exemption was made, however, for certain nonprofit and tax exempt organizations. Chapter 1333 amends section 445 to delete this exemption, so that the section now prohibits the referral of patients to physicians or hospitals by nonprofit and tax exempt organizations if such a referral is done for profit, which is presumed under the section if it is done for a fee. Prepaid health plans and crippled children's services programs, however, are still specifically exempted from the provisions of section 445. Violations of these provisions can be enjoined in actions brought by the Attorney General and penalized by fine, imprisonment, or both.

**COMMENT**

The legislature has apparently concluded that the policy arguments against medical referral for profit apply with equal weight when such a referral is made by a nonprofit or tax exempt organization. These policy arguments are based on the recognition of the fact that the more referrals that are made, the higher the profit realized by the referral service, and therein lies the potential for abuse. Further, the enactment of chapter 1333 reflects the legislative policy as expressed in section 650 of the Business and Professions Code, which provides that similar referrals for profit by medical licensees are unlawful.

See Generally:
1) 26 U.S.C. §501(c) (1967) (organizations exempt from federal taxes which were formerly exempted from the medical referral prohibition).

**Business Associations; alteration of medical records**

Business and Professions Code §§2416, 2428.5 (new); §§2361, 2363, 2384, 2390, 2391.5, 2399.5, 2417 (amended); Penal Code §471.5 (new).

AB 4469 (Waxman); STATS 1974, Ch 888

Section 2428.5 has been added to the Business and Professions Code to provide that any person holding a physician's and surgeon's or pediatrician's license who alters or modifies the medical records of any person with fraudulent intent shall be guilty of a misdemeanor. Crim-
inal penalties for this type of misdemeanor are established by section 2426, and include a fine of not less than $100 nor more than $600, or imprisonment for not less than 60 days nor more than 180 days, or both. Section 2428.5 further provides that such a violation shall be grounds for disciplinary action by the licensing board, which may impose a civil fine of $500 in addition to any other disciplinary action. Although the Business and Professions Code contains provisions imposing criminal sanctions for the fraudulent procurement and use of medical diplomas, certificates, and transcripts [See CAL. BUS. & PROF. CODE §§580-585], section 2428.5 is the first to impose such sanctions for the alteration of medical records. Further, section 471.5 has been added to the Penal Code to specify that such alteration is a misdemeanor.

In order to provide for stricter control over the activities of medical licensees, chapter 888 also enacts various changes in the provisions of the Business and Professions Code which relate to license revocation and unprofessional conduct. Representative of the trend toward stricter regulation are the amendments to sections 2399.5 and 2361, which narrow the circumstances under which dangerous drugs may be prescribed and reduce the standard required for a finding of unprofessional conduct from “gross incompetence” to “incompetence.” Section 2416 has been added to provide that the licensing board may order a licensee to be examined by a group of psychiatrists when the licensee appears to be so mentally ill that his ability to conduct his practice safely may be impaired, and section 2417 has been amended to provide that such a mental illness may justify license suspension or probation. Section 2363 has been amended to provide specifically that the revocation or suspension of a medical license issued by another state to a person who is also licensed in California may be grounds for the revocation of the California license. Sections 2384, 2390, and 2391.5 have undergone various revisions pertaining to unprofessional conduct based upon the misuse of narcotics, dangerous drugs, and controlled substances.

Business Associations; graduates of foreign medical schools

Business and Professions Code §§2147.1, 2193.71, 2193.72, 2193.75, 2193.77, 2193.78, 2395.5 (new); §§2178, 2396 (amended).
AB 2971 (Duffy); STATS 1974, Ch 251
(Effective May 14, 1975)

Under the previous statutory scheme, graduates of medical schools located outside the United States or Canada could only be licensed as physicians in California if they fulfilled all the requirements of section
2193.5 of the Business and Professions Code (licensing procedures including medical school graduation, license examination, internship, and oral and clinical examinations). A special exception was made for United States citizens who were graduates of Mexican medical schools under section 2193.7, which provided for an alternative licensing procedure based upon the requirement of a special clinical internship designed to provide basic clinical skills to such graduates. This special program expired on December 31, 1974.

Section 2193.71 has been added to the Business and Professions Code to provide a new means of licensing graduates of medical schools located outside the United States or Canada who are United States citizens, and replaces the special program under section 2193.7. Under the new section, such graduates may be licensed if they meet certain educational requirements and have passed a qualifying examination, have completed a one year clinical training program under the new section 2193.75 or under the special program authorized for graduates of Mexican schools by section 2193.7, and have fulfilled the normal requirements relating to internship and licensing examinations. Section 2193.75 empowers the Board of Medical Examiners to approve clinical programs for the implementation of the new statutory scheme, and section 2147.1 provides that students in such programs may treat the sick as part of the course of study. Sections 2193.77, 2178, 2395.5, and 2396 make technical changes relating to funding, eligibility rules, and the use of the title “M.D.”

**Business Associations; experimental drugs**

Health and Safety Code Article 4 (commencing with §26668) (new); §26679 (amended).
AB 4215 (Gonzales); STATS 1974, Ch 1163

In order to regulate closely the prescription and administration of drugs which have not been approved for general use, article 4 (commencing with §26668) has been added to the Health and Safety Code to provide that no such drug may be prescribed or administered for experimental purposes or for treatment of disease, unless certain requirements relating to the informed consent of the patient have been met.

“Experimental drugs” are defined by section 26668 as drugs used for investigational purposes only under specified conditions, and section 26668.3 has been added to provide that such drugs may not be pre-
scribed or administered without the written, informed consent of a person competent to give such consent. This consent is to be given by the patient if he is a competent adult, or may be provided jointly by the guardian or conservator of his person and his closest available relative if the patient is mentally incompetent. If no closest available relative can be located, the conservator may provide consent, and if the patient is a minor, his parents or guardian may render the required approval; but in no case may an experimental drug be administered to an adult who is unable to give informed consent unless such administration is for the treatment of disease or injury. Thus the prescription of these drugs in such cases, absent a pressing medical reason, is prohibited. In addition, section 26668.4 has been added to provide that before the consent of any of these persons has been obtained, they must be informed by the administering physician of all the known medical risks associated with the use of such a drug, as well as the name of the manufacturer of the drug. Further, if the patient is a competent adult giving his own consent, the section requires that the closest available relative be notified and be given an opportunity to consult with the patient. Failure to comply with these provisions is specifically stated to vitiate any consent obtained for the administration of such drugs.

Section 26668.9 provides that no person having an ownership interest in skilled nursing homes or intermediate care facilities may prescribe such drugs, and sections 26668.5, 26668.6, 26668.7, and 26669 enact related technical provisions pertaining to revocation of consent, copies of consent forms, and the Health Department's power to make additional rules and regulations. Section 26679, which provides that drugs which have not been approved for general use may be used for investigational purposes under certain conditions, has been amended to include a requirement that the experts using such drugs certify that they will comply with the provisions of the new article 4.

The practical effect of the addition of article 4 is to provide a set of requirements which must be met before experimental drugs may be prescribed or administered. Since violation of these provisions vitiates the consent required under section 26668.3, it appears to be the intent of the legislature to provide for potential civil liability in the event that these drugs are administered in violation of these provisions.

See Generally:
1) 17 CAL. ADMIN. CODE §10440 (additional regulations pertaining to drugs which have not been approved for general use).