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Consumer Protection

University of the Pacific; McGeorge School of Law

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Consumer Protection

Consumer Protection; sex discrimination

Civil Code §§51, 52, 53 (amended).

SB 1380 (Petris); STATS 1974, Ch 1193

Support: State Bar of California; National Organization for Women;
California Rural Legal Assistance; California Attorney General

Opposition: California Real Estate Association

Prior to the enactment of chapter 1193, the Unruh Civil Rights Act [CAL. CIV. CODE §51] prohibited discrimination in any business establishment on the basis of race, color, religion, ancestry, or national origin. Anyone guilty of such discrimination was liable to the person whose rights were denied for actual damages and an additional \$250. Section 53 declared void any provision in a written instrument relating to real property which attempted to restrict or forbid the transfer of that real property to, or use of it by, anyone on the basis of race, color, religion, ancestry, or national origin. Chapter 1193 adds *sexual* discrimination as an additional ground of recovery under the Unruh Act.

Irrespective of the present controversy concerning the applicability of constitutional safeguards of sex discrimination, it is difficult to ascertain whether this chapter does anything other than reiterate the existing law as codified in the Unruh Civil Rights Act and interpreted by the court [See *In re Cox*, 3 Cal. 3d 205, 213-16, 474 P.2d 992, 996-99, 90 Cal. Rptr. 24, 28-31 (1970)].

Consumer Protection; warranties

Civil Code §§1795.6, 1795.7 (new).

AB 3975 (Fenton); STATS 1974, Ch 844

The Song-Beverly Consumer Warranty Act [CAL. CIV. CODE §1790 *et seq.*] and sections 2313, 2314, and 2315 of the Commercial Code define and prescribe rules governing express and implied warranties. Section 1795.6 has been added to the Civil Code to provide that whenever the buyer of consumer goods selling for more than \$50 delivers

those goods to the manufacturer or seller for warranty repairs or service, or notifies the manufacturer or seller of the nonconformity of the goods pursuant to Civil Code Sections 1793.2(c) or 1793.3(c), any express or implied warranty of the goods accompanying the sale or consignment for sale shall automatically be tolled for a designated period. This tolling of the warranty shall extend from the date of the buyer's delivery or notification until the date on which (1) the repaired or serviced goods are returned to the buyer; (2) the buyer is notified that the goods have been repaired and are available for his possession; or (3) when repairs take place at his residence, the buyer is notified that the repairs or services are completed. Whenever an express or implied warranty is tolled pursuant to section 1795.6 as a result of repairs or service performed by any *retail* seller, the warranty between the manufacturer and the retail seller incurring obligations in giving effect to the warranty shall be extended pursuant to law. If the manufacturer provides for warranty repairs through its own service facilities or independent repair facilities, its exclusive liability under this section shall extend only to such facilities. In addition, every manufacturer (which for the purpose of §1795.6 includes the manufacturer's service or repair facility) or seller of consumer goods selling for \$50 or more must provide the buyer with a receipt which shows the date of purchase. Every manufacturer or seller who performs warranty repairs must provide the buyer with a work order or receipt containing certain delineated information such as the date the goods were returned to the manufacturer or seller and either the date the buyer was notified of the goods' repair or the date the goods were shipped or delivered to him. It would appear from the language of chapter 844 that these provisions are applicable to all warranties and cannot be modified or waived by the parties to the sale.

It is not totally clear from the language "consumer goods *selling* for \$50" whether the goods must be selling for \$50 at the time of the *repairs* or at the time of the *purchase* to be covered by chapter 844, although a reasonable interpretation would probably support the latter view. In addition, the language of the bill is unclear as to whether the provisions of sections 1795.6 and 1795.7 apply in situations where (1) several unrelated consumer goods are purchased at one time with a total purchase price of \$50 or more; or (2) a unit consisting of several related items (such as a stereo set) is purchased for \$50 or more, and an individual item of that unit selling for less than \$50 is repaired.

Consumer Protection; consumer warranties—used goods

Civil Code §1795.5 (amended).
SB 1602 (Song); STATS 1974, Ch 169

Chapter 169 adds subsection (d) to section 1795.5 of the Civil Code. This addition states that distributors or retail sellers who make express warranties regarding used goods sold within California are bound by the provisions of the Song-Beverly Consumer Warranty Act [CAL. CIV. CODE §1790 *et seq.*] *regardless* of when such goods were manufactured.

This amendment is a result of legislative concern that section 18 of the 1971 amendment to the Song-Beverly Act [CAL. STATS. 1971, c. 1523, at 3008] would be judicially interpreted to apply to used consumer goods. That section states that “[t]he provisions of this act . . . shall apply to sales of consumer goods occurring on and after January 1, 1972, *provided that such consumer goods are manufactured on or after March 1, 1971*” (emphasis added). It is the express intent of the legislature that chapter 169 act as a declaration of, rather than a change in, existing law; the March 1, 1971, date was *not* meant to apply to used consumer goods.

See Generally:

- 1) Comment, *Consumer Protection: The Effect of the Song-Beverly Consumer Warranty Act*, 4 PAC. L.J. 183 (1973).

Consumer Protection; vehicle dealers

Vehicle Code §11713.3 (new).
AB 1283 (Montoya); STATS 1974, Ch 222

Section 11713(g) of the Vehicle Code established that it is unlawful for any vehicle dealer to charge a purchaser more for licensing or transfer of title than the amount owed the state. Chapter 222 adds section 11713.3, which requires the dealer to return to the purchaser the amount of fees overpaid by that purchaser. The amount of this refund will be either the amount paid by the purchaser above that owed the state or the amount paid by him in excess of licensing or transfer of title fees paid by the dealer to the state prior to the sale. This refund is to be made whether or not a request for it is made by the purchaser. It should be noted that the buyer's need for judicial relief, if the dealer fails or refuses to refund the overpayment, may be obviated by first contacting the Department of Motor Vehicles, as it may be able to procure such a refund for him.

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If the dealer does overcharge, the Department may suspend his license pursuant to section 11705(9). Failure to refund any overcharge may also result in the suspension of his license. Although the statutes are silent on the matter, the courts will apparently only uphold such license revocations for violations occurring after the effective date of the law, and where due notice and opportunity for a hearing have been present [Williams Ford v. New Car Dealers Policy etc. Bd., 30 Cal. App. 3d 494, 106 Cal. Rptr. 340 (1973)].

Consumer Protection; model year in vehicle sales

Vehicle Code §11713.5 (new); §11705 (amended).

AB 3207 (Meade); STATS 1974, Ch 1025

Support: Automobile Club of Southern California

Opposition: Ford Motor Company

Section 11713.5 has been added to the Vehicle Code to prohibit a person licensed to sell motor vehicles (article 1, commencing with §11700) from displaying for sale, offering for sale or selling a motor vehicle (except for trucks or truck tractors over 10,000 pounds), while representing such vehicle to be a different model year from that designated at the time of manufacture. Any person licensed to sell motor vehicles is also prohibited from authorizing or advising any other person so licensed to change the model year of a motor vehicle on his inventory. Violation of section 11713.5 is grounds for revocation of the violator's license under section 11705.

Chapter 1025 was evidently prompted by complaints from consumers that dealers selling certain vehicles, such as light duty trucks and recreational vehicles on which the model year is difficult to determine from outward appearances, had been representing such vehicles as a later model year than the actual model year. Certain manufacturers of such vehicles were also reportedly advising dealers at the end of the model year that such vehicles could be updated and sold as later model years. Such a sale resulted in the initial buyer's paying the price of a current model year vehicle but receiving only the actual model year trade-in price when he sold the vehicle. Chapter 1025 would seem to eliminate this problem by statutorily prohibiting such practices.

Consumer Protection; price labels on motorcycles

Vehicle Code §§11712.5, 24014 (new).

AB 3645 (Thurman); STATS 1974, Ch 1089

Section 24014 has been added to the Vehicle Code to provide that no dealer shall sell, offer for sale, or display any new motorcycle unless there is affixed to the motorcycle a price label. This label must indicate the manufacturer's retail price for the motorcycle, the manufacturer's suggested retail price for each item of optional equipment attached to the motorcycle at the time of delivery to dealer, and the amount charged by the manufacturer to the dealer for transportation, assembly, and preparation. This echoes an obligation imposed upon automobile manufacturers to provide similar price stickers on new autos offered for sale [15 U.S.C. §1232].

Failure to comply with these provisions concerning motorcycles may result in action by the Department of Motor Vehicles to suspend or revoke the dealer's license to do business (§11705). Although the statute does not expressly confer on a purchaser the right to rescind a contract for sale of a motorcycle which lacked a price sticker at the time of purchase, it would appear that such a contract would be void for illegality and unenforceable, entitling the purchaser to recovery of money paid on the contract [Smith v. Bach, 183 Cal. 259, 262, 191 P. 14, 15 (1920)].

Consumer Protection; blood transfusions

Health and Safety Code §§1600.7, 1600.8, 1600.9, 1603.1, 1603.2 (new).

AB 1090 (Sieroty); STATS 1974, Ch 985

Chapter 985 represents a legislative response to the increased incidence of post-transfusion hepatitis in California, which can be traced in part back to the system of paid blood donors. While section 1002(h) (7) of title 17 of the California Administrative Code requires a testing of blood for hepatitis-associated antigens, and sections 2500 and 2501 require reporting by physicians, hospitals, and local health officers of cases of infectious and serum hepatitis, the newly added sections of the Health and Safety Code deal specifically with viral hepatitis and transfusion-associated hepatitis cases.

Section 1603.1 of the Health and Safety Code now requires blood banks to make laboratory tests of human whole blood to detect the presence of viral hepatitis. If the test reveals the presence of viral hepatitis, or an antigen thereof, in the blood tested, the blood bank is to transmit to the Department of Health and the county health officer certain delineated information. Hospitals and physicians are also re-

quired to report similar information (as soon as practicable following diagnosis) concerning carriers of viral hepatitis (as defined in §1600.9) under their treatment. All transfusion-associated hepatitis cases are to be reported immediately by hospitals and physicians to the county health officer for his investigation, the results of which are to be transmitted to the Department. This report shall contain the names of, and other information concerning, carriers of viral hepatitis, carrier donors (as defined in §1600.7), and possible carrier donors (as defined in §1600.8).

The Department is to furnish blood banks twice a month with a list containing the name, address, and social security number of all carrier donors, possible carrier donors, and carriers of viral hepatitis, as well as the date of the human whole blood donation and the name and address of the blood bank which received the donation if applicable. This list is to be compiled by the Department twice a month. The Department is also to contact carrier donors, if possible, to inform them that they may be carriers of viral hepatitis, that they should not make blood donations, and suggest appropriate treatment alternatives (§1603.1). No blood bank is to receive human whole blood from a person listed on the Department of Health's list as a carrier donor or a carrier of viral hepatitis (§1603.2).

These new requirements should provide a workable procedure for the regulation of blood donations and transfusions with respect to viral hepatitis, and consequently should achieve the goal of decreasing the incidence of viral hepatitis in California.

Consumer Protection; flammability standards

Health and Safety Code §19818 (new).

SB 1690 (Alquist); STATS 1974, Ch 1211

(Effective January 1, 1976)

Because of concern over the increased use of paper and disposable woven fabrics in hospitals, chapter 1211 has added section 19818 to the Health and Safety Code to require the State Fire Marshal to adopt and promulgate flammability standards relating to the use of fabric and fabric-like materials in items such as examination gowns, sleepwear, sheets, and pillowcases used in general hospitals, psychiatric hospitals, skilled nursing facilities, or intermediate care facilities in California (defined in §1250 of the Health and Safety Code). These regulations shall not apply to such materials when used in hospital operating rooms; they shall become operative January 1, 1976.

See Generally:

- 1) 19 CAL. ADMIN. CODE §§1171-1355 (flame-retardant chemicals and fabrics).

Consumer Protection; fertilizing materials

Food and Agricultural Code §14587 (repealed); §14622.5 (new); §§14586, 14622 (amended).
SB 1023 (Way); STATS 1974, Ch 12

Section 14551 of the Food and Agricultural Code requires any commercial fertilizer and agricultural mineral sold in the state to have either a tag or label affixed to it which lists, *inter alia*, the name of the substance, the name of the manufacturer, and a chemical analysis which states the percentages of the agricultural components of the product. Prior to their amendment by chapter 12, sections 14586 and 14587 set forth fixed tolerances below which the seller's chemical analysis could not fall without constituting a violation of the law. In place of these fixed percentage tolerances, section 14586 has authorized the Director of Food and Agriculture to establish tolerances which make allowance for variations caused by the taking, preparation, and analysis of an official sample of commercial fertilizer or agricultural mineral. Section 14586 further requires the Director to issue a report showing the findings of his analysis of samples of commercial fertilizer or agricultural mineral, and whether the product has met the standard or was found to be deficient.

The Director is now authorized under section 14622 to require submission of scientific data to substantiate the claims of effectiveness of the product of any registrant or proposed registrant. This authorization extends to data concerning any commercial fertilizer, agricultural mineral, or auxiliary soil chemical. Upon a finding that the provided data does not support the claims for the product, the Director may issue a notice of disapproval and prohibit the sale of the product. The amendment requires that the Director notify the registrant or proposed registrant of his right to a hearing. Prior to chapter 12, section 14622 only permitted the Director to request pertinent scientific data on the effectiveness of auxiliary soil chemicals. The sole remedy available to the Director, upon a finding of unsubstantiated claims concerning the product, was to cancel the registration or refuse to register any auxiliary soil chemical. Under section 14622.5 it is unlawful to sell any product which has been disapproved by the Director pursuant to section 14622, and such violation is a misdemeanor (§9).

Consumer Protection; pesticide chemical residue

Food and Agricultural Code §12671 (amended).
AB 2546 (Seeley); STATS 1974, Ch 97

Prior to the enactment of chapter 97, section 12671 of the Food and Agricultural Code made it unlawful to pack, ship, or sell any produce that contained an impermissible level of spray residue. Violations of this provision were misdemeanors (§9). While it was possible for the Director of Food and Agriculture to *seize* any lot of produce which contained an impermissible residue level, there was apparently no authority for his taking action prior to harvest.

Section 12671 has been amended to allow the Director or any county agricultural commissioner to *prohibit the harvest* of any produce which contains an impermissible level of spray residue, based on standards established by the Director. Chapter 97 does not affect the produce owner's right to appeal the Director's findings concerning the residue level as prescribed in sections 12610 through 12612.

Consumer Protection; agricultural pest control operators

Food and Agricultural Code §§11904, 12032 (repealed); §§11904, 11711 (new); §§11702, 12002, 12031, 12034 (amended).
AB 2541 (Fong); STATS 1974, Ch 900
AB 2543 (Fong); STATS 1974, Ch 901

Chapters 900 and 901 have been enacted to strengthen the state's control over pest control operations. The first bill deals with tightening license requirements, and the second regulates pest control advisers. The code sections which have been affected are as follows: section 11701 of the Food and Agricultural Code provides that anyone engaged in the business of pest control must obtain an agricultural pest control license from the Director of Food and Agriculture; section 11702 of the Food and Agricultural Code, which deals with license qualifications, has been amended by chapter 900 to require applicants for agricultural pest control business licenses to pass an examination to demonstrate to the Director of Food and Agriculture their ability to conduct pest control operations and their knowledge of the nature and effect of pest control materials. The provisions of section 11904, which required each pest control aircraft operation license to specify which of three designated classes of pest control operation the holder of the license was qualified in, have been repealed by chapter 900. In

place of those provisions the Director is required by sections 11702 and 11904 to establish general classes of pest control operations in which the applicants for pest control and pest control aircraft operation licenses may be qualified. Furthermore, chapter 901 adds section 11711 to the Food and Agricultural Code to require each employer's application for a license to include identification and the number and expiration date of the applicant's workmen's compensation insurance policy. If the application does not include this information, the Director is to refuse to issue the license unless such insurance is not required of the applicant or unless the applicant is a qualified self-insurer.

Prior to chapter 901, sections 12002 and 12031 required a licensed pest control *adviser* to register with the county agricultural commissioner in the county wherein the adviser desired to make recommendations for agricultural use, prior to making such recommendations. Section 12031 has been amended such that the pest control adviser must now register *in person* with the agricultural commissioner of the county of occupational choice. Registration in all other counties may be done by mail on prescribed forms which can be obtained and processed in the county where personal registration is made. Section 12032, which previously detailed the information required for registration with the county commissioner, has been repealed, since this required data is now enumerated on the prescribed forms identified in section 12031. The provision of section 12002 which required the agricultural pest control adviser to furnish the county agricultural commissioner with a copy of his agricultural pest control license at the time of registration has been deleted by chapter 901. Lastly, section 12034, dealing with fees for such registration, has been modified.