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Consumer Protection

University of the Pacific; McGeorge School of Law

Consumer Protection

Consumer Protection; retail installment accounts

Civil Code §1810.3 (amended).
AB 704 (Sieroty); STATS 1975, Ch 947

Subdivisions (a), (b) and (c) of Section 1810.3 of the Civil Code set forth specified procedures by which a seller under a retail installment account is to notify a buyer that such buyer's account contained a *debit* in excess of one dollar at the end of any billing cycle when such is the case. These subdivisions require the seller to give to the buyer a statement or statements specifying the buyer's balance at the beginning of the billing cycle, the amount and date of each extension of credit during the billing cycle, any amounts credited to the account during the billing cycle, the amount and rate of any finance charge, and the balance in the account at the close of the cycle. Additionally, the seller is required to notify the buyer of any changes made in the terms of the retail installment account not less than 30 days prior to the effective date of such changes.

Chapter 947 has added Subdivisions (d), (e), (f), and (g) to Section 1810.3, specifying procedures by which the seller under a retail installment account must either notify the buyer of his right to request a refund of any outstanding *credit* balance in excess of one dollar, or actually refund the outstanding credit balance. Under Section 1810.3 (d), if an outstanding credit balance in excess of one dollar exists in a retail installment account, the seller must mail or deliver to the buyer either (1) a cash refund of the credit balance, or (2) a statement of the balance. If the seller chooses the latter alternative, he or she must additionally mail or deliver the statement of credit balance no fewer than two more times during the six months following the creation of the credit balance. If the credit balance exists for 90 days, the seller must either notify the buyer of his right to request a cash refund in the amount of the outstanding balance, or refund to the buyer the balance at any time after it is created in the account and prior to the date by which the first notice of the right to request a refund would have been required. If the seller chooses to notify the buyer of his right to request a refund of a credit balance, he or she must do so in each of two successive statements covering each of the two successive billing cycles following the

initial 90-day period. This notice must be clear and conspicuous, and accompanied by a self-addressed return envelope.

Pursuant to Section 1810.3(e), if a retail installment account containing an outstanding credit balance lies dormant for 180 days after the credit balance is created, the seller is required to mail or deliver a refund of the credit balance to the buyer's last known address. If such an attempted delivery fails, the seller is required to make one further attempt to obtain a correct address, and mail the refund once more. If this also fails, and the returned refund is in excess of $25, the seller must reinstate the amount of the credit balance on the buyer's account for one year. Thereafter, or if the returned refund reflects a credit balance of $25 or less, the seller is not obligated to take any further action unless the buyer of the retail installment account requests a refund of the credit balance, in which case the seller must either refund the credit balance or provide a written explanation of the reasons for which the request is refused. The seller is not required to give notification under subdivisions (d) and (e) if the buyer makes a written request to the seller to retain the outstanding credit balance on his or her account.

Section 1810.3(f) provides that if an outstanding credit balance remains unrefundable for seven years from the date it was created, it shall escheat to the state pursuant to Section 1520 of the Code of Civil Procedure. Subdivision (g) provides that for the purposes of Section 1810.3 of the Civil Code, a credit balance is created at the close of the billing cycle in which it was first recorded, and is created again at the close of the billing cycle in which it has been changed due to the buyer's use of his or her account. Furthermore, it should be noted that Chapter 947 applies only to credit balances created *on or after* January 1, 1976.

See Generally:
1) CAL. CIV. CODE §§1810.1-1810.6 (provisions regulating creditors' statements and finance charges under retail installment accounts).

Consumer Protection; layaway practices

Civil Code Title 1.4 (commencing with §1749) (new).
SB 824 (Smith); STATS 1975, Ch 825
Support: National Organization of Women

Chapter 825 has added Title 1.4 (commencing with §1749) to the Civil Code to regulate layaway practices of retail sellers. Under prior law there were no provisions specifically governing such practices. Section 1749.1(c) defines "layaway" as an agreement between the retail seller and the consumer by which the seller agrees, upon deposit of a

specified sum by the consumer, to retain specified consumer goods for later sale to the consumer at a specified price. Section 1749 requires the seller to provide the consumer with a written statement which must include the amount of the deposit received, the length of time the goods will be held on layaway, a specific description of the goods, the total purchase price of the goods (including a separate listing of any handling charges), and any other terms of the layaway agreement. The agreement must also expressly inform the consumer that the seller will refund the layaway deposit and any subsequent payments if the goods have for any reason become unavailable in the same condition as they were at the time of the sale to the consumer before the end of the layaway period. It should be noted, however, that no provision of Chapter 825 expressly requires the seller to make such a refund, although it is likely that the written statement required by Section 1749 would create an express warranty [*See* CAL. COMM. CODE §2313] which could be enforced by the consumer. Consumer goods covered by Chapter 825 are those which are to be used primarily for personal, family, or household purposes.

No specific penalty provision was created by Chapter 825 for violations of the provisions of Civil Code Section 1749. However, it is possible that a violation of Section 1749 would constitute a deceptive act or practice within the purview of Section 1770(n) of the Civil Code, which prohibits any person from representing that a transaction confers certain rights or obligations when, in fact, it does not. As such, a retail seller who violates Section 1749 might be subject to the penalties imposed under the Consumer Legal Remedies Act [CAL. CIV. CODE §1750 *et seq.*] which include actions for injunctive relief and actions to recover actual and punitive damages [*See* REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 343 (Consumer Protection; false advertising)]. Additionally, Section 1749.4 provides that nothing in Chapter 825 shall be construed to limit any legal obligations imposed under the Unruh Act [CAL. CIV. CODE §1801 *et seq.*] governing credit sales. Finally, Section 1749.2 provides that any waiver by the consumer of the provisions of Chapter 825 is void and unenforceable as contrary to public policy.

Consumer Protection; false advertising

Business and Professions Code §§12024.6, 17504 (new); Civil Code §1770 (amended).
SB 948 (Ayala); STATS 1975, Ch 379

Support: Department of Consumer Affairs
SB 949 (Ayala); STATS 1975, Ch 907
Support: Department of Food and Agriculture; Association of County Sealers
SB 974 (Holden); STATS 1975, Ch 1123
Support: National Organization of Women

Section 17500 of the Business and Professions Code makes it unlawful for any person, firm, corporation, or association to disseminate in any newspaper, other publication, or any advertising device, with the intent to dispose of property, any statement which is untrue or misleading, and which is known or should be known to be such, or to make or cause to be made any such statement as part of a plan or scheme with the intent not to sell such property at the advertised price or as advertised. Chapter 1123 has added Section 17504 of the Business and Professions Code to require any retail seller who advertises, by price, consumer goods used primarily for personal, family, or household purposes and which are sold *only* in multiple units, to advertise such goods at the price of the *minimum multiple unit* in which they are offered. Food items are expressly excluded from the purview of this section. Violations of Section 17504 are punishable as a misdemeanor (§17534), and by a civil penalty not to exceed $2,500 per violation (§17536). Injunctions to prohibit violation of Section 17504 may be requested by the Attorney General or a district attorney, county counsel, city attorney, or city prosecutor (§17535).

Section 12024.6 has been added to the Business and Professions Code by Chapter 907 to prohibit the advertising, soliciting, or representing of a product for sale or purchase if the solicitation is intended to entice a consumer into a transaction which is different from the transaction originally represented. Such "bait-and-switch" tactics may be enjoined by the Director of Agriculture or by a county sealer acting through the district attorney or the county counsel (§12012.1). As introduced, Senate Bill 949 prohibited false advertising of products wherein weight or measure was an economic consideration, and thus the provisions of this chapter were placed in Division 5 (commencing with §12001) of the Business and Professions Code, which regulates weights and measures. The reference to weight and measure as an economic consideration was subsequently deleted by amendment, however [S.B. 949, 1975-76 Regular Session, *as amended*, August 12, 1975], but because of the placement in the Business and Professions Code, enforcement of Chapter 907 is still the responsibility of the Director of Agriculture and

county sealers. Additionally, any act which is a violation of Section 12024.6 would appear to be equally violative of Section 17500, which prohibits false or misleading advertising. Therefore, anyone who violates Section 12024.6 would seem to be subject to the same penal and civil penalties as those delineated above for a violation of Section 17504.

In addition, Chapter 379 has amended Section 1770 of the Civil Code, which describes certain acts which constitute unfair methods of competition and unfair or deceptive practices within the Consumer Legal Remedies Act [CAL. CIV. CODE §1750 *et seq.*]. As amended by this chapter, Section 1770 now additionally includes as an unfair practice advertising unassembled furniture without indicating that it is unassembled, and advertising the price of unassembled furniture without indicating the assembled price if such furniture is available assembled from the seller. Any consumer who suffers damage because of a violation of Section 1770 may bring an action to enjoin such practices and an action to recover actual and punitive damages (§1780). Thirty days before the commencement of an action for damages, the consumer must notify the seller of the alleged violation and demand that such violation be corrected. In addition, an action for damages may be brought if the seller makes or agrees to make the requested correction within 30 days after receipt of such notice (§1782). Such action may be brought as a class action (§1781), and, in such case, actual damages, but in no event less than $300 presumed damages, shall be awarded (§1780).

See Generally:

1) Note, *Consumer Protection: An Expanded Role For The Local Prosecutor*, 44 U. CIN. L. REV. 81 (1975) (analysis of need for, and ability of, local prosecutors to assume expanded roles in effectively enforcing consumer protection laws).

Consumer Protection; home solicitation

Business and Professions Code §17500.3 (amended).
AB 1270 (Fenton); STATS 1975, Ch 343
Support: Attorney General

In 1972, the California Legislature added Section 17500.3 to the Business and Professions Code to require any person who sells goods or services door-to-door to identify himself or herself, state the trade name of the person he or she represents, state the kind of goods or services being offered for sale, and display an identification card containing the above information before making *any* other statement other than a greeting [CAL. STATS. 1972, c. 1415, §1, at 3077]. Prior to the enactment of Chapter 343, however, a loophole existed in that the provisions

of Section 17500.3 requiring such initial identification of the salesman were applicable only where the buyer actually entered into an agreement to purchase goods or services with the salesman. Thus, where no sale was made, the failure to make such initial identification was not unlawful. With the enactment of Chapter 343, Section 17500.3 has been amended to eliminate this "loophole," thus making the failure to initially provide the requisite identification information unlawful in *every* instance rather than just when a sale is consummated. Although subdivision (c) allows a recovery of damages by an injured party for the intentional violation of Section 17500.3, this penalty is applicable only where an actual contract has been entered into as a result of the home solicitation. Since no similar penalty or remedy has been created for violation of amended Section 17500.3(a) where no sale is made, it seems the only penalties for failure to make the requisite identification by a door-to-door salesman are those provided for in Sections 17534 (making violation a misdemeanor) and 17535 of the Business and Professions Code (permitting injunctive relief). It would seem desirable to permit the consumer who is a victim of a violation of Section 17500.3 and who does not enter into a contract with the salesman to recover damages for violation of this section, since it would appear that it was originally enacted to protect consumers from the "serious nuisance" of door-to-door salesmen [*See*, 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 360 (1973)].

See Generally:
1) CAL. CIV. CODE Chapter 2 (commencing with §1689) (recission of contracts).
2) Comment, *A New Remedy For California Consumers: The Right to Cancel a Home Solicitation Contract* 3 PAC. L.J. 633 (1972).
3) Project, *The Direct Selling Industry: An Empirical Study*, 16 U.C.L.A. L. REV. 883 (1969).

Consumer Protection; home improvement contracts

Business and Professions Code §7159 (amended).
AB 726 (Thomas); STATS 1975, Ch 511
Support: Contractors' State License Board

Chapter 511 has amended Section 7159 of the Business and Professions Code, which regulates home improvement contracts and those who contract to perform home improvement work. As amended, Section 7159 applies to any "general" or "specialty" contractor who is licensed or subject to licensure, and who contracts for home improvement work with the owner or tenant of *any* building or structure, where the aggregate contract specified in one or more improvement contracts, including

labor, services, and materials furnished by the contractor, exceeds $500. Section 7159(e) prohibits any such contractor from requiring, pursuant to a home improvement contract, a downpayment which exceeds $100 or one percent of the contract price, which ever sum is greater. While Section 7159(f) allows a contractor to require periodic payments in advance of the completion of the work contracted for, it prohibits a contractor from requiring any advance payment in excess of the value of the work completed at the time of the advance payment, except for the downpayment authorized pursuant to Section 7159(e). Pursuant to Chapter 511, there are two exceptions to the prohibitions regarding downpayments and advance payments, and the requirement in Section 7159 of a payment schedule: (1) where the contractor provides performance and completion bonds for the entire value of the contract; or (2) where the parties to the contract agree that full payment will be made upon satisfactory completion of the project. Prior to the enactment of Chapter 511, Section 7159 applied only to "prime" contractors who contracted for home improvement work with the owner or tenant of a one, two, or three-family dwelling place. Furthermore, it applied only to home improvement contracts where the aggregate price exceeded $100 and some consideration was payable prior to completion, and to contracts where the aggregate price exceeded $600 with no consideration payable prior to completion.

Chapter 511 has also added to Section 7159 the requirement that the writing which evidences the home improvement contract must include the registration number of any salesman who solicited or negotiated the contract, in addition to the previously required name of the salesman, and the name, address, and license number of the contractor. Chapter 511 also provides that any violation of Section 7159 is a misdemeanor punishable by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Consumer Protection; consumer reporting agencies

Civil Code Title 1.6 (commencing with §1785.1) (repealed); Title 1.6 (commencing with §1785.1), Title 1.6A (commencing with §1786) (new).
AB 600 (Lewis); STATS 1975, Ch 1271
AB 601 (Lewis); STATS 1975, Ch 1272

Permits consumers to visually inspect their files held by consumer reporting agencies; limits the dissemination of consumer

credit reports and investigative consumer reports; limits the type of data which may be included in such reports; enacts provisions allowing consumers to dispute information in consumer credit or investigative consumer files; requires consumer reporting agencies to develop and maintain procedures designed to insure compliance with these chapters; enacts specific consumer remedies for noncompliance with these chapters by consumer reporting agencies.

Chapter 1271 has repealed California's Consumer Credit Reporting Act [CAL. CIV. CODE §1785.1 *et seq.*] and replaced it with the Consumer Credit Reporting Agencies Act [CAL. CIV. CODE §1785.1 *et seq.*], while Chapter 1272 has enacted the Investigative Consumer Reporting Agencies Act [CAL. CIV. CODE §1786 *et seq.*]. The Consumer Credit Reporting Agencies Act incorporates most of the former Consumer Credit Reporting Act, which regulated those companies that compile and rate credit information concerning consumers, but expands upon it in several areas. Whereas under the prior act a credit agency was required upon a consumer's request to disclose the "nature and substance" of all information in its files on that consumer, Section 1785.10 requires that a credit agency allow "visual inspection" of all its files on the consumer. In addition to the right of visual inspection, the consumer may obtain a copy of his or her file for a fee (§1785.15(b)). The new law also requires that a consumer credit reporting agency provide to a consumer a written explanation of any coded information in the consumer's file (§1795.15(e)). Section 1785.11 circumscribes the furnishing of a credit report by a consumer credit reporting agency, limiting the disbursement of such a report to a person who intends to use it in connection with a credit, insurance, or employment transaction, or other legitimate business need. The provisions of Chapter 1271, however, do not apply to licensed private investigators pursuant to Section 1785.4

Section 1785.13(a) bans specifically enumerated items of information from inclusion in a consumer credit report. Included in this ban are records of arrest, indictment, information, or conviction of a crime which, from the date of dismissal, acquittal, release, or parole, antedate the consumer credit report by more than seven years. The prohibitions of Section 1785.13(a) do not apply where the employment, credit, or insurance transaction involves a salary or sum equal to or greater than $30,000, $50,000, or $100,000, respectively (§1785.13(b)). A consumer credit reporting agency must maintain reasonable procedures to avoid violations of Section 1785.13 and must insure that the consumer credit report is used only for the purposes enumerated in Section 1785.11 (§1785.14). These procedures must require that any prospec-

tive users of a consumer credit report identify themselves, certify the purposes for which the information is to be used, and certify that it will be used for no other purpose. Consumer credit reporting agencies are required to keep a record of these purposes as stated by users of a report (§1785.14).

Under the repealed Consumer Credit Reporting Act, if a consumer disputed any item of information contained in his or her file, the consumer credit reporting agency was required to reinvestigate and record the item's current status unless the agency had determined the dispute to be frivolous or irrelevant. While retaining this provision, Chapter 1271 adds the requirement that if an agency determines that a dispute is frivolous or irrelevant, it must notify the consumer of such determination within five days, and specifically state its reasons for such determination (§1785.16(a)). If upon reinvestigation it is ascertained that the disputed information is inaccurate, or can no longer be verified, it must be deleted from the consumer's file (§1785.16(a)). Section 1785.16(a) additionally requires that the consumer must be notified of such deletion, and states that the presence of information in the consumer's file that contradicts the contention of the consumer does not, in and of itself, constitute reasonable grounds for believing that the dispute is frivolous or irrelevant. The Consumer Credit Reporting Agencies Act also retains the consumer's right to file a statement of dispute if a reinvestigation does not resolve the disagreement, and extends the same opportunity to instances where the agency has determined a dispute to be frivolous or irrelevant (§1785.16(b)). When a consumer credit reporting agency furnishes a credit report for employment purposes which contains items of information that are matters of public record and which may have an adverse effect upon the consumer's ability to obtain employment, Section 1785.18(b) requires the agency to maintain strict, rather than merely reasonable, procedures designed to insure that such items of information are complete and up to date.

Under prior law, a user of a consumer credit report was required to notify the consumer of the name and address of the reporting agency whenever credit was denied, or the charge for credit was increased on the basis of a credit report. Chapter 1271 extends this duty to notify to users of such reports who, as a result, deny or increase the charge for insurance, or refuse employment to the consumer (§1785.20(a)). If credit or insurance is denied, or the charge for either is increased on the basis of information received from a person *other* than a consumer credit reporting agency, and the information relates to the consumer's credit standing, the user of the information must notify the consumer

of his or her right to request, in writing, disclosure of the reasons for such adverse action (§1785.20(b)). Upon such a request the user of the information must disclose to the consumer the nature and substance of the information (§1785.20(b)). However, with regard to the provisions of Subdivisions (a) and (b) of Section 1785.20, subdivision (c) specifies that no one will be held liable for a violation of the provisions if he or she shows, by a preponderance of the evidence, that at the time of the alleged violation he or she maintained reasonable procedures to assure compliance with subdivisions (a) and (b).

One of the most significant differences between the new Consumer Credit Reporting Agencies Act and the former act is the addition of consumer remedies for noncompliance with the law by a credit agency. Previously, only willful misrepresentation was grounds for a civil action or criminal prosecution. Now, pursuant to Section 1785.30(a), any consumer credit reporting agency or user of information that negligently fails to comply with any requirement under the Consumer Credit Reporting Agencies Act is liable to the consumer for either the actual damages sustained by the consumer or $300, whichever is *greater.* In addition, the agency or user is liable for the costs of any successful action brought by the consumer as well as reasonable attorney's fees as determined by the court. If the violation is determined to be grossly negligent or willful, the consumer may recover punitive damages (§1785.30 (b)). None of these remedies are applicable, however, where the failure to comply with the Consumer Credit Reporting Agencies Act results in a more favorable credit report than if there had been compliance with the law. Section 1785.32 establishes a statute of limitations of two years on any action maintained under the Consumer Credit Reporting Agencies Act. However, where there has been a willful material misrepresentation, the action may be brought at any time within two years after the discovery by the consumer of the misrepresentation.

Chapter 1272 has added the Investigative Consumer Reporting Agencies Act to the Civil Code. Investigative consumer reporting agencies are those agencies which assemble reports containing information concerning a consumer's personal characteristics, character, reputation, or mode of living, but do not gather information pertaining to a consumer's credit standing or credit worthiness (§1786.2(c)). The information thus gathered about a consumer is then used for insurance or employment purposes (§1786.2(d)).

The provisions of the Investigative Consumer Reporting Agencies Act are similar to those of the Consumer Credit Reporting Agencies Act.

There are, however, a few important provisions in Chapter 1272 which differ from those of Chapter 1271. First, concerning notification to the consumer, if the procurement of an investigative consumer report is being considered in connection with the underwriting of insurance, the fact that it *may* be sought must be disclosed in writing on a document signed by the consumer, or if no such document is involved, in a written notification to the consumer within three days (§1786.16(a)). If an investigative consumer report is sought for employment purposes, the person seeking the report must notify the prospective employee in writing within three days after the date on which the report was first requested that such a report was so requested. Further, the notice must include the name of the agency preparing the report, and a summary of the provisions permitting the consumer to have access to his or her file (§1786.16(b)). A second distinguishing feature of the Investigative Consumer Reporting Agencies Act is contained in Section 1786.30, which provides that when an investigative consumer report contains information *adverse* to the consumer, such adverse information may not be included in a subsequent report unless it has been reverified. However, where the adverse information is received within the three months preceding the date on which the subsequent report is furnished, or is a matter of public record, it need not be reverified, but it must be kept up to date pursuant to Section 1786.28(b).

In addition, while an investigative consumer reporting agency must allow the consumer to visually inspect its files concerning the consumer, it may *withhold* information on the consumer's medical history, even if such information had been previously obtained from the consumer himself (§1786.10). However, the consumer must be informed of the existence of such withheld information, and the consumer may inspect the information upon written authorization from his or her attending physician. Another provision which distinguishes Chapter 1272 from Chapter 1271 is that records of arrest, indictment, and information misdemeanor complaints *may* be reported by an investigative consumer reporting agency when pronouncement on the judgment upon the particular matter is pending (§1786.18(a)(6)).

Furthermore, the remedy provisions of the Investigative Consumer Reporting Agencies Act are different in two significant respects from the remedy provisions of the Consumer Credit Reporting Agencies Act. While under Chapter 1271 a consumer credit reporting agency is liable for actual damages when it *negligently* fails to comply with the Consumer Credit Reporting Agencies Act, an investigative consumer reporting agency will be held liable for actual damages to the consumer for

any failure to comply with the provisions of Chapter 1272. The second distinguishing remedial feature of the Investigative Consumer Reporting Agencies Act occurs with respect to the maintenance by a consumer of actions for invasion of privacy or defamation, which are allowed as a remedy against investigative consumer reporting agencies and the users of their reports (§1786.52), but are *not* allowed against consumer credit reporting agencies and the users of their reports (§1785.31).

COMMENT

Chapters 1271 and 1272 are both very similar to their federal counterpart—the Fair Credit Reporting Act [15 U.S.C. §1681 *et seq.* (1970)]—which consolidates the federal law governing both consumer credit reporting agencies and investigative consumer reporting agencies. There are several significant differences, however. Federal law allows the consumer access only to the "nature and substance" of his or her file. The Consumer Credit Reporting Agencies Act and the Investigative Consumer Reporting Agencies Act, on the contrary, allow the consumer to *visually inspect* all information contained in the file. A further significant difference is contained in the provisions for consumer remedies. Under Sections 1681(n) and 1681(o) of the Fair Credit Reporting Act, recovery by the consumer is predicated upon a showing of actual damages, which possibly discourages the redress of negligible claims [*See* Comment, *Protecting Consumers from Arbitrary, Erroneous, and Malicious Credit Information*, 4 U.C.D. L. REV. 403, 418 (1971)]. Chapters 1271 and 1272, however, provide for a presumed recovery of $300, which should give consumers a meaningful remedy against a consumer reporting agency guilty of noncompliance with the law. Additionally, the new law limits the former broad array of entities entitled to receive a consumer credit or investigative consumer report to those who need one in connection with a legitimate economic transaction, including transactions involving the granting of credit, the underwriting of insurance, or employment. A further departure from federal law is the California requirement that a consumer reporting agency must notify a consumer whose dispute has been deemed frivolous or irrelevant that such a determination has been made and specifically state its reasons for so deciding, whereas federal law contains no such requirement.

In enacting Chapters 1271 and 1272, the California legislature declared that there exists a need to insure that consumer credit reporting agencies and investigative consumer reporting agencies "exercise their grave responsibilities with fairness, impartiality, and a respect for the

consumer's right to privacy," and that it is the purpose of these chapters to require such agencies to "adopt reasonable procedures" to do just that [CAL. CIV. CODE §§1785.1, 1786].

See Generally:
1) Comment, *Protecting Consumers From Arbitrary, Erroneous, And Malicious Credit Information*, 4 U.C.D. L. REV. 403 (1971).
2) Comment, *Protection of the Consumer Interests and the Credit Rating Industry*, 2 PAC. L.J. 635 (1971).

Consumer Protection; open meetings

Education Code §23101 (amended); Government Code §§9028.5, 11125.1, 11130.5, 54957.1, 54960.5 (new); §§9027, 9029, 11126, 54952.3, 54957 (amended).
SB 1 (Moscone); STATS 1975, Ch 959
Support: California Newspaper Publishers Association
Opposition: League of California Cities; County Supervisors Association

Chapter 959 has increased the access of the public to the various functions of government at both the state and local levels by limiting the instances in which governmental bodies may meet in executive, or "closed," sessions. Chapter 959 specifically affects meetings of the state legislature, the Public Utilities Commission, and state and local agencies.

Section 9027 of the Government Code, which specifies what legislative business must be conducted openly, has been amended by Chapter 959 to require *all* legislative conference committee meetings to be open to the public. Previously, only a conference committee meeting on the budget was required to be open. A conforming change has been made in Section 9029, which allows certain legislative business to be conducted privately, to exclude conference committee meetings from business which may be so conducted.

Under prior law, state agencies and legislative bodies of local agencies were allowed to hold executive sessions when considering the appointment, employment, or dismissal of a public officer or an employee. Chapter 959 has deleted the provisions allowing executive sessions when the agency is considering such matters as they relate to public officers, while retaining the provisions for executive sessions as to personnel matters concerning employees [CAL. GOV'T CODE §§11126, 54957]. "Employee" is defined as *not* including any person elected or appointed to a public office by a state agency, or appointed to an office by a legislative body of a local agency [*Id.*]. Furthermore, state agencies and leg-

islative bodies of local agencies are required, at a subsequent public meeting, to report any action or vote taken regarding the appointment, employment, or dismissal of an employee arising out of any executive session (§§11125.1, 54957.1).

Chapter 959 has also revised the law regarding meetings of the Public Utilities Commission, deleting the provision of Section 11126 of the Government Code which permitted the Commission to deliberate in executive session on decisions to be reached in matters for which public hearings have been held. As amended, Section 11126 allows the Commission to hold closed sessions to deliberate on the institution of proceedings, disciplinary actions against regulated utilities, or litigation, while requiring open and public meetings whenever the rates of entities over which the Commission has jurisdiction are changed. Finally, Chapter 959 authorizes the award of court costs and reasonable attorney fees to any plaintiff who prevails in an action where it is found that either a state or local agency has violated the provisions of Government Code Sections 11120 through 11131 or Sections 54950 through 54961, respectively. However, in order to avoid spurious lawsuits, Sections 11130.5 and 54960.5 permit the court to award court costs and attorney fees to a defendant who prevails in an action which the court determines to have been frivolous and totally lacking in merit.

See Generally:
1) Bales, *Public Business Is Not Always Public*, 7 URBAN LAWYER 332 (1975).
2) Herlick, *California's Secret Meeting Law*, 37 CAL. S.B.J. 540 (1962).
3) Note, *Open Meeting Statutes: The Press Fights For The "Right To Know,"* 75 HARV. L. REV. 1199 (1962).

Consumer Protection; Director of the Department of Consumer Affairs—Legal Powers

Business and Professions Code §§307, 321 (new); §§301, 302, 310, 312, 313, 313.5, 320 (amended).
SB 853 (Moscone); STATS 1975, Ch 1262
Support: Department of Consumer Affairs
Opposition: California Real Estate Association

The enactment of Chapter 1262 broadens the legal powers of the Director of the Department of Consumer Affairs to intervene in pending legal or administrative proceedings, or to commence legal proceedings, in order to effectively advance the interests of consumers within California. Prior to the enactment of this chapter, Section 320 of the Business and Professions Code permitted the Director to intervene in matters pending before regulatory agencies or courts only when the matter did not involve an alleged violation or the suspension or revocation of a pro-

fessional license, and the Director felt that the matter might substantially affect the interests of California consumers. As amended by Chapter 1262, Section 320 now permits the Director to intervene in *any* matter which he or she feels may substantially affect the interests of consumers in California. As defined in Section 302(g), " 'interests of consumers' is limited to the cost, quality, purity, safety, durability, performance, effectiveness, dependability, availability, and adequacy of choice of goods and services offered or furnished to consumers, and the adequacy and accuracy of information relating to consumer goods, services, money, or credit . . . ." Because of broad powers given to the Director of the Department of Consumer Affairs by Section 320, allowing him to intervene in actions on behalf of consumers, it would appear, at first glance, that the Director could intervene in a disciplinary proceeding by the State Bar against an attorney, especially in an action which involves advertising. However, under the State Bar Act [CAL. BUS. & PROF. CODE §6000 *et seq.*], no law which prescribes a mode of procedure for the exercise of powers by state agencies is applicable to the State Bar unless expressly made so by the legislature [CAL. BUS. & PROF. CODE §6001]. Thus, the power of intervention given to the Director of the Department of Consumer Affairs is not applicable to State Bar proceedings.

Section 321 has been added to the Business and Professions Code, empowering the Director of the Department of Consumer Affairs or the Attorney General to commence legal proceedings to enjoin any unlawful act or practice, or intended act or practice, which the Director feels is actually or potentially injurious to the interests of consumers within California. Furthermore, Section 307 has been added to the Business and Professions Code, allowing the Director to contract for the services of experts and consultants where he or she feels it is necessary to effectuate the provisions of the Consumer Affairs Act [CAL. BUS. & PROF. CODE Chapter 4 (commencing with §300)].

Consumer Protection; arrest records—motor vehicle insurance

Insurance Code §11580.08 (new).
AB 480 (Ingalls); STATS 1975, Ch 420
Support: California Trial Lawyers Association

Section 11580.08 has been added to the Insurance Code to prohibit an issuer of automobile or motor vehicle liability insurance, or its agency or employee, from asking an insurance applicant to disclose previous arrests for offenses which relate to the operation of a motor vehicle from which no conviction resulted. Section 11580.08 also prohibits an issuer

from conditioning the granting of a policy upon an applicant's disclosure of motor vehicle-related offenses not resulting in a conviction. A violation of Section 11580.08 subjects an insurer to possible revocation or suspension of its insurance license by the state Insurance Commissioner [CAL. INS. CODE §§1738, 1668(1)].

COMMENT

Prior to the enactment of Chapter 420, insurers were not prohibited from asking or requiring an applicant to disclose arrests for motor vehicle-related offenses. However, pursuant to Vehicle Code Section 1808, all abstracts of accident reports are open to public inspection, and, as provided in Vehicle Code Section 20012, the California Highway Patrol may release the entire contents of all required accident reports "to any person who may have a proper interest therein . . . .", although the report is inaccessible to the general public. Thus, an issuer of motor vehicle liability insurance will still be able to obtain, indirectly, much of the information which it could not obtain directly from an insurance applicant by reason of Section 11580.08 of the Insurance Code.

Consumer Protection; blood container labeling

Health and Safety Code §1603.5 (new).
SB 409 (Beilenson); STATS 1975, Ch 1180
Opposition: California Medical Association; California Blood Bank System

Chapter 1180 has added Section 1603.5 to the Health and Safety Code to require blood banks, or any person engaged in the business of blood collection, to label each container of blood as either being received from a "volunteer" donor or from a "paid" donor. The designated volunteer or paid donor status of the blood must be printed on the blood container label in letters at least one inch high. These labeling requirements apply to any container of human whole blood, or component of human blood, including plasma. Pursuant to subdivision (b), one who donates blood will be considered a paid donor if he or she receives money, or any valuable consideration which can be converted into money, in exchange for the donation of blood. However, "payment," as defined in Section 1603.5(b)(3), does not include blood assurance benefits received as a result of a blood donation to a donor club or blood assurance program, or time away from employment granted by an employer to an employee in order to donate blood. Furthermore, subdivi-

sion (c) requires any blood bank that receives blood from *outside* of California to label the blood as "paid donor" blood, unless the blood bank receives with the out-of-state shipment of blood a certificate which states that the blood was acquired from volunteer donors not receiving payment, in which case the blood may carry a "volunteer" label. Subdivision (d) additionally specifies that the labeling of blood containers shall *not* give rise to any implied warranties of safety and fitness for intended use. Hence, one who contracts viral hepatitis as the result of a blood transfusion may not recover under theories of breach of warranty or strict liability in tort, but rather only where there is a showing of negligence or intentional misconduct [Shepard v. Alexian Brothers Hosp., 33 Cal. App. 3d 606, 614-15, 109 Cal. Rptr. 132, 136-37 (1973)].

COMMENT

It has been estimated that nationally there are about 30,000 cases of blood transfusion-associated hepatitis every year, with deaths resulting in perhaps 1500 to 3000 cases [Note, *Strict Liability for Disease Contracted from Blood Transfusion*, 66 NW. U. L. REV. 80, 91 (1971)]. Medical authorities are in general agreement that blood from paid donors, often derelicts or drug addicts, is more likely to contain hepatitis-associated antigens than blood donated voluntarily, with some authorities estimating that possibly 30 percent of blood obtained from paid donors contains hepatitis-associated antigens, as compared to only one-tenth of one percent of the blood acquired from volunteer donors [*Id.* at 91-92]. Although Chapter 1180 does not ban the use, for transfusions, of blood received from paid donors, in view of the well-documented risk in using blood from paid donors physicians may be more reluctant in the future to utilize blood identified as being received from a paid donor. If so, then the enactment of Chapter 1180 should aid in reducing the incidence of blood transfusion-associated viral hepatitis in California.

See Generally:

1) 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 243 (1975) (reporting occurrences of viral hepatitis to Department of Health).
2) 4 LAW. MED. CYCLOPEDIA §30.125b (Rev. ed. 1975) (viral—infectious and serum —hepatitis).

Consumer Protection; ophthalmic devices

Business and Professions Code §§2541.3, 2541.6 (new); Health and Safety Code §26685 (amended); Welfare and Institutions Code §14110.5 (new).

SB 511 (Alquist); STATS 1975, Ch 754
Support: California Optometric Association; State Board of Optometry

Chapter 754 has been enacted to require the State Department of Health, the State Board of Optometry, and the Board of Medical Examiners to adopt minimum quality standards for the regulation of prescription ophthalmic devices, including lenses, frames, and contact lenses [CAL. BUS. & PROF. CODE §2541.3]. The standards, which will become operative on July 1, 1976, must at the minimum equal the 1972 standards of the American National Standards Institute. Section 2541.3 of the Business and Professions Code also prohibits any person or group which deals with prescription ophthalmic devices from selling, dispensing, or furnishing any prescription ophthalmic device which falls below the minimum standards adopted by the Department of Health, and the Boards of Optometry and Medical Examiners. Any violation of the standards adopted pursuant to Section 2541.3 is a misdemeanor, and any optometrist, ophthalmologist, or dispensing optician who violates the standards will also be subject to disciplinary action by the appropriate licensing board (§2541.3).

Effective January 1, 1977, no prescription ophthalmic device which fails to meet the standards adopted pursuant to Section 2541.3 may be purchased with state funds, nor may any payment be made under Medi-Cal for such below-standard devices [CAL. BUS. & PROF. CODE §2541.6; CAL. WELF. & INST. CODE §14110.5]. Furthermore, Section 26685 of the Health and Safety Code has been amended by Chapter 754, authorizing the Department of Health to require any manufacturer, wholesaler, or importer of ophthalmic devices to obtain a license to manufacture, sell, or import such devices. Prior to the enactment of this chapter, existing law provided for the regulation of optometrists and registered dispensing opticians [CAL. BUS. & PROF. CODE §§2540-2559, 3000-3167], but did not set any minimum quality standards for prescription ophthalmic devices.