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# Consumer Protection

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# Consumer Protection

## Consumer protection; unsolicited services

Civil Code §1584.5 (amended).

AB 781 (Sher); 1985 STAT. Ch 80

Support: Department of Consumer Affairs; Attorney General

Existing law provides that the voluntary and unsolicited sending of goods, wares, or merchandise not ordered or requested by the recipient is to be deemed an unconditional gift.<sup>1</sup> Existing law further authorizes the recipient to enjoin the sender from billing or requesting payment for the gift.<sup>2</sup> Chapter 80 extends these provisions by providing that unsolicited *services* are an unconditional gift.<sup>3</sup> Further, Chapter 80 allows the recipient to enjoin the provider of services from billing or requesting payment for the services.<sup>4</sup>

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1. CAL. CIVIL CODE §1584.5.

2. *Id.* Chapter 80 also provides that reasonable attorney's fees and costs may be awarded to the prevailing party. *Id.*

3. *Id.* This provision is not applicable to contractual plans or arrangements between a provider and consumer under which the provider regularly sends form rejection notices that allow a minimum of 10 days to return the form or card. *Id.* §1584.5(a). Further, continuity plans, subscription arrangements, standing orders, and supplement or series arrangements are exempted from this provision. *Id.* §1584.5(b).

4. *Id.* §1584.5.

## Consumer Protection; address disclosure requirement

Business and Professions Code §17538.5 (amended).

SB 158 (Ellis); 1985 STAT. Ch 1525

Support: Department of Finance

Existing law provides that any person<sup>1</sup> conducting a mail order or catalog business who uses an address<sup>2</sup> primarily for the receipt of

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1. Person includes any individual, partnership, firm, association, or corporation. CAL. BUS. & PROF. CODE §17506.

2. The address may be either a post office box or a street address. *Id.* §17538.5.

mail or as a telephone answering service must disclose in all advertisements<sup>3</sup> the legal name of the business and the street address from which business is actually conducted.<sup>4</sup> Chapter 1525 expands the scope of existing law to include *any business* that uses a post office box or street address primarily for the receipt of mail or as a telephone answering service.<sup>5</sup> Chapter 1525, however, provides exceptions to the address disclosure requirement (1) when the preponderance of goods and services sold are from premises open to the public,<sup>6</sup> and the post office box or telephone answering service is ancillary to the sales of the business, or (2) when services are provided pursuant to a specified license,<sup>7</sup> if the licensing authority has a current business or home address of the business, and authorization to release information to inquiring persons.<sup>8</sup> Under existing law any violation of these provisions is a misdemeanor punishable by imprisonment not exceeding six months,<sup>9</sup> a fine up to \$2,500, or both.<sup>10</sup>

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3. Disclosures are required in all advertising and promotional materials, including order blanks and forms. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* (the business must be open to the public during normal business hours).

7. *Id.* (this exception does not apply to a person conducting a mail order or catalog business). The license must be issued pursuant to the Business and Professions Code or any other provision of law by a state board or agency, or by a city or county of California. *Id.*

8. *Id.*

9. *Id.* (imprisonment is to be in the county jail).

10. *Id.*

## Consumer protection; consumer credit advertising

Business and Professions Code §17538.7 (new).

AB 1970 (Molina); 1985 STAT. Ch 734

Support: Attorney General; Department of Consumer Affairs;  
Department of Finance

The Unruh Act requires that retail installment accounts and retail installment contracts meet specified disclosure requirements.<sup>1</sup> Chapter 734 expands this protection to provide similar disclosure requirements for advertised open-end credit plans.<sup>2</sup> Under Chapter 734, any adver-

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1. CAL. CIV. CODE §§1801-1801.7.

2. CAL. BUS. & PROF. CODE §17538.7.

tisement for the sale of goods, property, or services through consumer credit under an open-end credit plan must clearly and conspicuously disclose the following: (1) the cash price and amount or percentage of any down payment;<sup>3</sup> (2) the amount and number of monthly or periodic payments and whether this calculation is based on the assumption that the purchaser has no outstanding balance due under the open-end credit plan;<sup>4</sup> (3) the amount of finance charge and any periodic rate expressed as an annual percentage rate;<sup>5</sup> (4) any other specified charges that might be imposed;<sup>6</sup> (5) the name of the creditor;<sup>7</sup> and (6) whether the creditor's approval is a precondition to the availability of the advertised terms.<sup>8</sup>

Catalogs and other multiple-page advertisements comply with Chapter 734 if accompanied by a table or schedule containing sufficiently detailed information to permit determination of the disclosure requirements.<sup>9</sup> Chapter 734 states that this table or schedule must appear in a clear and conspicuous manner and that any statement appearing anywhere in the catalog or advertisement concerning the amount or number of payments or period of repayment must clearly refer to the page on which the table or schedule appears in the advertisement.<sup>10</sup> Further, the cash price must be disclosed in proximity to any statement of the advertised payment, number of payments, or period of repayment.<sup>11</sup> Finally, Chapter 734 prohibits a seller from advertising terms that are not or will not be arranged or offered by the creditor.<sup>12</sup>

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3. *Id.* §17538.7(a)(1).
  4. *Id.* §17538.7(a)(2).
  5. *Id.* §17538.7(a)(3).
  6. *Id.* §17538.7(a)(4) (minimum, fixed, transaction, and activity charges plus any membership or participation fee).
  7. *Id.* §17538.7(a)(5) (if other than the seller).
  8. *Id.* §17538.7(a)(6).
  9. *Id.* §17538.7(b)(1).
  10. *Id.* §17538.7(b)(2)(disclosure page must contain disclosures of a representative scale of amounts up to the level of commonly sold higher-priced items or services).
  11. *Id.* §17538.7(c).
  12. *Id.* §17538.7(d).

## Consumer Protection; credit services organizations—claims procedures

Civil Code §1789.24 (new)

AB 1101 (Harris); 1985 STAT. Ch 275

Support: Secretary of State; Department of Finance; Department of Consumer Affairs; Attorney General

Existing law requires that any credit services organization<sup>1</sup> that charges or receives money from buyers<sup>2</sup> prior to completion of services the organization has agreed to perform, must either obtain a surety bond or establish a trust account.<sup>3</sup> Chapter 275 sets forth an administrative procedure for processing claims against such deposits<sup>4</sup> and provides that a person asserting a claim against a deposit must fully establish the claim with the Secretary of State.<sup>5</sup> Under Chapter 275, no approved claim against a particular deposit account can be paid until the expiration of a period of 240 days from the date of approval of the first claim against the account.<sup>6</sup> In the event that multiple claims are filed against an insufficient deposit account, each approved claim is to be paid a pro rata share of the deposit account,<sup>7</sup> payable only upon expiration of the 240-day period in which the claim was filed.<sup>8</sup> Chapter 275 further states that after a deposit account is exhausted, no further claimants will be paid, and claimants who have previously been paid will not be required to make a contribution back to the deposit account for the benefit of unpaid claimants.<sup>9</sup> Finally, Chapter 275 prohibits attachment, garnishment, or execution pursuant to an action or judgment against a credit services organization, of any deposit made in lieu of a bond, except for any amount that would be returned to the credit services organization by the Secretary of State.<sup>10</sup>

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1. CAL. CIV. CODE §1789.12(a) (definition of credit services organization).

2. *Id.* §1789.12(b) (definition of buyer).

3. *Id.* §1789.13; *see id.* §995.710(a) (establishes the dollar amount to be secured by the bond).

4. *Id.* §1789.24(a) (procedure is in lieu of proceeding under Code of Civil Procedure §996.430).

5. *Id.* The claimant must furnish evidence to the Secretary of State of a money judgment entered by a court, and evidence that the claimant is a person described in Civil Code §1789.18(b). *Id.* The Secretary of State is to review, approve, and date the claim prior to designating the claim approved. *Id.* §1789.24(b).

6. *Id.* §1789.24(c).

7. *Id.*

8. *Id.* §1789.24(d) (the first approved claim against a deposit account following the expiration of a 240-day period begins a new 240-day period, in which the same administrative procedure applies).

9. *Id.* §1789.24(e).

10. *Id.* §1789.24(f).

## Consumer Protection; trademarks

Business and Professions Code §14330 (amended).

AB 1900 (Davis); 1985 STAT. Ch. 478

Support: Los Angeles County Bar Association; Governor's Legal Affairs Unit

Existing law provides the owner of a trademark<sup>1</sup> with injunctive relief if infringement creates a likelihood of injury to business reputation or dilution of the distinctive quality of a trademark.<sup>2</sup> Chapter 478 provides such relief for use or unauthorized infringement of the trademark when the infringer is utilizing the mark primarily as an ornament, decoration, garnishment, or embellishment on or in products for the purpose of enhancing the commercial value, or marketability<sup>3</sup> of products, merchandise, goods, or services.<sup>4</sup> This provision does not prohibit comparative advertising,<sup>5</sup> which is defined as the use of a competitor's trademark in advertising to compare the relative qualities of the competitive goods.<sup>6</sup>

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1. CAL. BUS. & PROF. CODE §14207 (definition of a trademark); *Id.* §14330(a) (trademark must be valid under common law or registered under the Trademark Law of the Business and Professions Code).

2. *Id.* §14330(a).

3. *Id.* §14330(b) (enhancing, selling or soliciting purchases).

4. *Id.* In *International Order of Job's Daughters v. Lindeburg and Co.*, 633 F.2d 912 (1981), the Ninth Circuit held that under the Lanham Act, Title 15 of the United States Code, a trademark owner has a property right only so far as necessary to prevent consumer confusion as to who produced the goods and to facilitate differentiation of the trademark owner's goods. *Lindeburg*, 633 F.2d 912, 919 (1981). Chapter 478 will extend protection beyond that offered by the Lanham Act as determined under *Lindeburg*, and includes trademarks registered under Title 15 of the United States Code in its provisions. Compare CAL. BUS. & PROF. CODE §14330(b), with *Lindeburg*, 633 F.2d 912, 919 (1981).

5. CAL. BUS. & PROF. CODE §14330(c).

6. *Id.* §14330(d).

## Consumer Protection; home improvement contracts

Civil Code §1633 (new).

AB 741 (Johnston); 1985 STAT. Ch 989

Support: Attorney General; Department of Consumer Affairs

Chapter 989 provides that when the seller of home improvements<sup>1</sup>

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1. Home improvement means any improvement to residential real property for personal,

knows that the buyer of such improvements intends to obtain a loan from a third party to finance all or part of the contract price, the contract will be valid and enforceable only if (1) the third party agrees to make the loan,<sup>2</sup> (2) the buyer agrees to accept the loan,<sup>3</sup> and (3) the buyer does not rescind the loan transaction within the three-day period allowed for rescission.<sup>4</sup> Furthermore, under Chapter 989 the seller must refrain from performing services, delivering property, or representing in any manner that the buyer has any contractual obligation until the loan transaction is finalized and the rescission period has passed.<sup>5</sup> Violation of any of these provisions renders the contract invalid and unenforceable.<sup>6</sup>

When a home improvement contract is unenforceable under the provisions of Chapter 989, the seller must immediately and unconditionally return any and all consideration received from the buyer.<sup>7</sup> In the event that the seller received consideration from the buyer in the form of property and is for any reason unable to return the property, the seller must immediately tender to the buyer either the fair market value of the property or its value as stated in the contract, whichever is greater.<sup>8</sup> Chapter 989 provides that the seller may recover property delivered pursuant to an unenforceable contract provided that (1) the property can be returned to the seller without damage to the buyer,<sup>9</sup> (2) the seller returns any property taken from the buyer,<sup>10</sup> and (3) the seller recovers the property within sixty days of the execution of the contract.<sup>11</sup> The rights and remedies provided to the buyer under Chapter 989 are in addition to those provided under other laws.<sup>12</sup> Any waiver of the provisions of Chapter 989 will be deemed contrary to public policy and void.<sup>13</sup>

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family, or household purposes, including repairs to the structure, improvements such as swimming pools and hot tubs, and goods or services installed or furnished in connection with the improvement of real property. CAL. CIV. CODE §1633(e).

2. *Id.* §1633(a)(1).

3. *Id.* §1633(a)(2).

4. *Id.* §1633(a)(3) (pursuant to federal Truth in Lending Act, 15 U.S.C. §§1601-1635 or Regulation Z, if applicable).

5. *Id.* §1633(b).

6. *Id.*

7. *Id.* §1633(c).

8. *Id.*

9. *Id.* §1633(d)(2)(A).

10. *Id.* §1633(d)(2)(B) (at seller's expense).

11. *Id.* §1633(d)(2)(C) (at seller's expense).

12. *Id.* §1633(f).

13. *Id.* §1633(g).

## Consumer Protection; automobile sales financing

Civil Code §2982 (amended).

AB 68 (Calderon); 1985 STAT. Ch 33

(Effective May 7, 1985)

Support: California Bankers Association; State Banking Department;  
Department of Consumer Affairs

Existing law authorizes the computation of interest on consumer automobile financing by either the add-on<sup>1</sup> or simple interest<sup>2</sup> method.<sup>3</sup> Chapter 33 has retained the same formulas for computing interest, but has eliminated the one percent monthly ceiling<sup>4</sup> on interest charges for specified types of loans,<sup>5</sup> while maintaining the ceiling on the maximum annual percentage rate of interest chargeable.<sup>6</sup>

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1. CAL. CIV. CODE §2982(j)(1)(A). The amortization rate is calculated by multiplying the financed amount in specific dollar level increments by predetermined interest rates. *Id.*

2. *Id.* §2982(j)(1)(C) (maximum interest chargeable under the simple interest method).

3. *Id.* §2982(j)(1).

4. *Id.* §2982(j)(1)(ii) (one percent of the entire unpaid balance multiplied by the number of months between the date of the contract and the due date of the last installment). While this provision literally applies to loans with bimonthly payments as well as to balloon payment loans, the effect of eliminating the monthly interest ceiling is to allow balloon payments of estimated wholesale value at the end of the finance term, or residual value, when these loans would have violated §2982(j)(1)(A)(ii) because of the nonamortizing interest on the large balloon balance. *Id.*

5. *Id.* §2982(j)(4) (contracts providing for unequal or irregular payments, or payments on other than a monthly basis).

6. *Id.* §2982(j)(1).

## Consumer Protection; motor vehicles—service contracts

Civil Code §1794.41 (new); §§1791, 1794.4 (amended).

AB 2285 (Moore); 1985 STAT. Ch 1047

Support: Automobile Club of Southern California; Department of  
Consumer Affairs

Under existing law, a service contract<sup>1</sup> can be sold to a buyer in addition to or in lieu of an express warranty.<sup>2</sup> With the enactment

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1. Service contract is a contract in writing to perform over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product. Excluded from this definition are automobile insurance policies as defined in Insurance Code §116. CAL. CIV. CODE §1791(o).

2. CAL. CIV. CODE §1794.4.



of Chapter 1047, a service contract covering any motor vehicle<sup>3</sup> purchased for use in California cannot be sold unless the provisions of the contract state in readily understood language the terms, conditions, and exclusions of the contract<sup>4</sup> and disclose the buyer's cancellation and refund rights.<sup>5</sup>

With the enactment of Chapter 1047, the seller must refund to the purchaser the full amount paid if: (1) the purchaser provides written notice of the cancellation to the person specified in the contract; (2) claims have not been made against the contract; and (3) the cancellation is within the first sixty days after receipt of the contract, or within thirty days after receipt of the contract by the purchaser of a used motor vehicle without manufacturer warranties, unless a longer period is specified.<sup>6</sup> After the first sixty days of receipt of the contract, or after thirty days after receipt of the contract by the purchaser of a used motor vehicle without manufacturer warranties, unless the contract allows a longer period, a pro rata refund, based on either elapsed time or mileage will be made.<sup>7</sup> In addition, the seller may assess a cancellation or administrative fee of not more than \$25.<sup>8</sup>

Under Chapter 1047, if a claim has been made against the contract within the first sixty days after receipt of the contract, or thirty days after receipt of the contract by the purchaser of a used motor vehicle without manufacturer warranties, a pro rata refund based on either elapsed time or mileage will be made by the seller to the purchaser upon notice of cancellation.<sup>9</sup> If the contract was financed with a vehicle purchase, the seller may make the refund payable to the purchaser, the lender of record, or both.<sup>10</sup> Furthermore, Chapter 1047 provides that the contract must be available for inspection by the buyer prior to the purchase of the contract.<sup>11</sup>

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3. CAL. VEH. CODE §415 (definition of motor vehicle).

4. CAL. CIV. CODE §1794.41.

5. *Id.* §1794.41(a) (disclosures specified by Civil Code §1794.4).

6. *Id.* §1794.41(c).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* §1794.41(b). The contract or a brochure that specifically describes the terms, conditions, and exclusions of the contract, together with provisions relating to contract delivery, cancellation, and refund, must be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself must be delivered to the buyer. *Id.*

**Consumer Protection; mobile home, manufactured home, commercial coach, and recreational vehicle warranties**

Civil Code §1797.6 (new); §§1797.1, 1797.2, 1797.3 (amended); Health and Safety Code §§18021.5, 18025, 18029, 18550.5 (amended).

AB 1403 (McClintock); 1985 STAT. Ch 763

Support: Department of Housing and Community Development; Department of Finance

Existing law requires that all new mobilehomes<sup>1</sup> and manufactured homes<sup>2</sup> delivered by a dealer to a buyer be covered by a warranty valid for at least one year from the date of delivery, provided that the buyers or their transferees give written notice of any defects discovered to the dealer or manufacturer at their business address within one year and ten days from the date of delivery.<sup>3</sup> Existing law further specifies that the warranty is to cover all specified systems,<sup>4</sup> and must guarantee that the mobilehome or manufactured home is free from substantial defects in materials or workmanship.<sup>5</sup>

Chapter 763 has clarified the standard warranty provisions by defining substantial defects in materials and workmanship as defects manifested by broken, ripped, cracked, stained or missing parts or components, or workmanship resulting in improper function of materials, components, appliances, or systems as installed or manufactured by the dealer or manufacturer.<sup>6</sup> Additionally, Chapter 763 expands the list of specified systems and equipment that are to be included under warranty,<sup>7</sup> and adds a requirement that if the corrective action taken by the dealer or manufacturer fails to eliminate a substantial defect, the material, component, system or appliance is to be replaced in kind.<sup>8</sup> Chapter 763 also requires that manufacturers and dealers maintain records of all actions taken pursuant to these

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1. CAL. HEALTH & SAFETY CODE §18008 (definition of mobilehome).

2. *Id.* §18007 (definition of manufactured home).

3. CAL. CIV. CODE §1797.3.

4. *Id.* §1797.3(e) (plumbing, heating, electrical systems, and all appliances).

5. *Id.* §1797.3(a).

6. *Id.* §1797.1(b).

7. *Id.* §1797.3(e) (cooling, fire safety, and structural systems). The list of minimally covered systems and equipment has also been added to CAL. CIV. CODE §1797.2.

8. *Id.* §1797.3(g). Replaced in kind means (1) replacement with the identical material, system, appliance, or component, and if not available (2) replacement with a comparable or better material, system, appliance or component. *Id.*

provisions, including all correspondance to or from buyers for a period of three years from the date of delivery.<sup>9</sup>

Existing law declares it unlawful to sell, rent, or lease within California any mobilehome or manufactured home unless the plumbing, heating, and electrical equipment meet Administrative Code requirements<sup>10</sup> in effect when the unit was built.<sup>11</sup> Chapter 763 has expanded these requirements to include structural and fire safety<sup>12</sup> systems, and has extended this protection to commercial coaches,<sup>13</sup> special purpose commercial coaches,<sup>14</sup> and recreational vehicles.<sup>15</sup> Chapter 763 further prohibits a dealer from removing a towbar, wheels, wheel hubs, or axles from a manufactured home or mobilehome unless such modification is provided for in the purchase document.<sup>16</sup>

Further provisions in existing law provide for criminal sanctions,<sup>17</sup> suspension or revocation of licenses,<sup>18</sup> civil penalties,<sup>19</sup> and restitution against any party who knowingly violates any statutory or regulatory requirements relating to licensing or titling and registration.<sup>20</sup> In addition to these sanctions, Chapter 763 explicitly authorizes the recovery of investigative and enforcement costs from the licensee, unless the licensee prevails on the charges.<sup>21</sup>

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9. *Id.* §1797.6.

10. CAL. ADMIN. CODE tit. 25 §§4049.1-4049.9 (construction requirements).

11. CAL. HEALTH & SAFETY CODE §18025. This provision applies to manufactured homes and mobile homes manufactured after September 1, 1958. Chapter 763 has extended this provision to commercial coaches, special purpose commercial coaches, and recreational vehicles manufactured after September 1, 1958. *Id.*

12. CAL. ADMIN. CODE tit. 25 §4049.3 (structural, fire safety and energy requirements).

13. CAL. HEALTH & SAFETY CODE §18001.8 (definition of commercial coach).

14. *Id.* §18012.5 (definition of special purpose commercial coach).

15. *Id.* §18025. Chapter 763 also prohibits conversion or alteration of these systems once they bear a state or federal insignia or label of approval unless such alterations are in compliance with state regulations. *Id.* §18029.

16. *Id.* §18550.5.

17. *Id.* §18021.5(a) (misdemeanor punishable by a fine of up to \$2,000, imprisonment not to exceed 30 days, or both).

18. *Id.* §18021.5(b) (suspension or revocation of license).

19. *Id.* §18021.5(c) (civil penalty not to exceed \$2,000 for each violation or for each day of a continuing violation).

20. *Id.* §18021.5(d).

21. *Id.* §18021.5(b).

## Consumer Protection; release of demand deposit funds

Financial Code §§40500, 40501 (new).

SB 1204 (Ellis); 1985 STAT. Ch. 1057

Support: Department of Corporations; State Banking Department

Existing law protects banks from liability to adverse claimants for failure to release a depositor's funds to satisfy an adverse claim against the depositor's account.<sup>1</sup> Chapter 1057 specifically prohibits financial institutions<sup>2</sup> from releasing funds from a demand deposit account unless the release is authorized<sup>3</sup> by the depositor or is in accordance with the law.<sup>4</sup> Further, Chapter 1057 expresses legislative intent to codify existing case law for the convenience of the public, regulatory authorities, and financial institutions.<sup>5</sup>

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1. CAL. FIN. CODE §952 (notice to any bank of an adverse claim to a deposit is to be disregarded). Exceptions to this provision are made (1) if the adverse claimant is the beneficiary of an account held by the depositor as a fiduciary, or (2) when a court of competent jurisdiction issues an injunction or other appropriate order. *Id.*

2. *Id.* §40501 (chapter 1057 applies to banks, savings associations, credit unions or other financial institutions).

3. See CAL. COM. CODE §§3401-3406 (authorization establishing liability of parties).

4. CAL. FIN. CODE §40501.

5. *Id.* §40500. See *Wright v. Bank of California*, 276 Cal. App. 2d 485, 491, 81 Cal. Rptr. 11, 15 (1969) (issuance of a cashier's check in the place of original check, without an endorsement and without determining authority of person signing, could constitute negligence).

