

1-1-1987

# Consumer Protection

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

Part of the [Legislation Commons](#)

---

## Recommended Citation

University of the Pacific; McGeorge School of Law, *Consumer Protection*, 18 PAC. L. J. 547 (1987).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol18/iss2/16>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# Consumer Protection

## Consumer Protection; bad checks—punitive damages

Civil Code § 1719 (amended).  
SB 1626 (Ellis); 1986 STAT. Ch. 708

Under existing law, any person who fails to pay in cash the amount owed on any check,<sup>1</sup> draft,<sup>2</sup> or order,<sup>3</sup> which was dishonored<sup>4</sup> for lack of funds<sup>5</sup> or credit, within thirty days of a written demand,<sup>6</sup> is liable to the payee for treble damages.<sup>7</sup> Chapter 708 extends liability for treble damages to makers of checks, drafts, or orders that were dishonored because the maker stopped payment,<sup>8</sup> unless payment was stopped to resolve a good faith dispute<sup>9</sup> with the payee.<sup>10</sup> In addition, Chapter 708 prohibits a court from awarding damages for failure to pay the amount due on any dishonored instrument, unless a copy of the written demand sent to the maker, and a signed certified mail

---

1. CAL. COM. CODE § 3104(2)(b) (definition of check).

2. *Id.* § 3104(2)(a) (definition of draft). *See generally* 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Negotiable Instruments* § 7 (Supp. 1984) (discussing various types of negotiable instruments, such as checks and drafts).

3. CAL. COM. CODE § 3102(b) (definition of order).

4. *Id.* § 3507(1)(a), (b) (an instrument is dishonored when the instrument is duly presented and payment is refused or cannot be obtained within the prescribed time, or if presentment is excused and the instrument is not duly accepted or paid). *See id.* § 3508(3) (notice of dishonor may be given in any reasonable manner that identifies and states that the instrument has been dishonored). *See generally* 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Negotiable Instruments* § 110 (8th ed. 1973) (discussion of what constitutes dishonored).

5. CAL. CIV. CODE § 1719 (includes situations in which the maker has no account with the drawee).

6. Pursuant to Chapter 708, a drawee must inform the maker of potential liability for treble damages, as well as the amount owed. *Id.* § 1719(a).

7. *Id.* § 1719. Treble damages mean treble the amount owing on the dishonored check, draft, or order. Damages include the costs of mailing the written demand. *Id.*

8. CAL. COM. CODE § 4403 (customer's right to stop payment). *See generally* Hawkland, *Stop Payment Orders Under the Uniform Commercial Code*, 3 U.C.C. L.J. 103, 108-18 (1970) (form and manner for effecting stop payment).

9. CAL. CIV. CODE § 1719(b) (the existence of a good faith dispute is determined by the trier of fact).

10. *Id.* § 1719(a). A sample written demand form is provided for use in stop payment cases, and any notice must be substantially the same as the sample. *Id.* § 1719(c).

receipt showing delivery of the demand to the maker's address, are received into evidence.<sup>11</sup>

SDS

---

11. *Id.* § 1719(d). A cause of action for failing to pay the amount due on a dishonored instrument may be brought in any small claims court if the claim does not exceed the jurisdiction of the court. *Id.* § 1719(e). See CAL. CIV. PROC. CODE § 116.2(a) (amount in controversy in small claims court may not exceed \$1,500).

## Consumer Protection; grey market goods

Civil Code §§ 1797.8, 1797.81, 1797.82, 1797.83, 1797.84, 1797.85, 1797.86 (new); § 1770 (amended).

AB 2735 (Peace); 1986 STAT. CH. 1497

Sponsor: Author

Existing law protects a purchaser of consumer goods by providing warranty protection.<sup>1</sup> Chapter 1497 requires a retail seller of grey market goods<sup>2</sup> to post a sign disclosing specified information regarding grey market goods that are sold in the store.<sup>3</sup> Each advertisement<sup>4</sup>

---

1. See CAL. CIV. CODE § 1793; 15 U.S.C. §§ 2301-2312 (Magnuson-Moss Act, providing remedies for breach of warranty). See also CAL. CIV. CODE § 1770 (enumerating unfair or deceptive acts and practices that are unlawful in the sale or lease of goods or services to consumers).

2. CAL. CIV. CODE § 1797.8(a) (grey market goods include any goods bearing a trademark and normally accompanied by a warranty valid in the United States, which are imported into the United States through channels other than the manufacturer's authorized United States distributor); see also Nolan-Haley, *The Competitive Process and Gray Market Goods*, 5 N.Y.L. SCH. J. INT'L & COMP. L. 231, 231-32 (1984) (grey market goods are genuine goods imported in contravention of an existing exclusive distributorship).

3. CAL. CIV. CODE § 1797.81(a). Each sign must disclose that grey market goods may not (1) be covered by a manufacturer's express written warranty valid in the United States, (2) be compatible with United States electrical currents, (3) be compatible with United States broadcast frequencies, (4) have replacement parts available through the manufacturer's United States distributor, (5) have compatible accessories available through the manufacturer's United States distributor, (6) be accompanied by instructions in English, (7) be eligible for a manufacturer's rebate, or (8) conform with any other relevant domestic standards known to the seller. *Id.* Nothing in Chapter 1497 abrogates any implied warranty provided by law. *Id.* § 1797.81(a)(1). In addition, the sign must be conspicuously posted where the product is displayed. *Id.* § 1797.81(a).

4. Chapter 1497 does not define the term "advertisement." See 1986 Cal. Stat. ch. 1497, at \_\_\_\_\_.

of grey market goods must disclose the same information, and all grey market goods must be labelled with this information.<sup>5</sup> Under Chapter 1497, a warranty disclosure is not required if the grey market goods are accompanied by an express written warranty provided by the retail seller, and each of the following conditions is satisfied: (1) the protections of the seller's warranty are equal to or better than protections provided by the manufacturer's warranty that accompanies the goods when sold to buyers in the United States, (2) the express warranty is set forth in simple and readily understandable language which clearly identifies the party making the warranty,<sup>6</sup> (3) signs are posted informing prospective buyers that copies of all warranties are available for inspection, and (4) the seller has complied with the requirements of presale availability of written warranties.<sup>7</sup> A violation of these provisions constitutes unfair competition,<sup>8</sup> and may result in a refund to, or rescission of the sale by, the consumer.<sup>9</sup>

SLP

---

5. CAL. CIV. CODE § 1797.81(a) (list of tag requirements); *id.* § 1797.82 (advertising requirements).

6. *Id.* §§ 1790-1795.7 (requirements of the Song-Beverly Consumer Warranty Act).

7. *Id.* § 1797.81(b). *See also* 15 U.S.C. § 2302(b)(1)(a) (1975) (requirements of presale availability of the Magnuson-Moss Act); 16 C.F.R. §§ 702.1-.3 (1975) (presale availability of written warranty terms).

8. *See* CAL. BUS. & PROF. CODE § 17200 (definition of unfair competition); CAL. CIV. CODE § 1770 (list of proscribed practices). Remedies available for deceptive practices as listed in California Civil Code § 1770 include actual damages, punitive damages, an injunction, and any other relief which the court deems proper. *Id.* § 1780(a). Unfair competition may be enjoined, and any person engaging in such conduct is liable for a fine not exceeding \$2500. CAL. BUS. & PROF. CODE §§ 17203, 17206.

9. CAL. CIV. CODE § 1797.85 (providing for refund); *id.* § 1797.86 (providing for rescission). Credit may be given for credit purchases, and all refunds are subject to the condition that the product has been returned and has not been used in a manner inconsistent with any printed instructions provided by the seller. *Id.* § 1797.85.

## Consumer Protection; recordings—disclosure requirement

Penal Code § 653w (amended).

AB 4301 (Eaves); 1986 STAT. Ch. 367

Sponsor: Author

Support: Attorney General; Alliance of Motion Picture and Television Producers

Existing law provides that a person<sup>1</sup> who knowingly<sup>2</sup> advertises, sells,<sup>3</sup> or possesses any recording of sounds for financial profit or commercial advantage, without conspicuously disclosing the actual names and addresses of the manufacturer and the performers on the cover box or jacket of the recording, is guilty of a misdemeanor.<sup>4</sup> Chapter 367 expands the definition of recording to include any tangible medium<sup>5</sup> upon which information, sounds, or images are recorded or otherwise stored.<sup>6</sup> In addition, Chapter 367 requires the name of the author, artist, producer, or programmer to be disclosed on the cover box or jacket.<sup>7</sup> Furthermore, Chapter 367 extends these disclosure requirements to persons who rent recordings.<sup>8</sup>

NJW

---

1. CAL. PENAL CODE § 653h(d) (person means any individual, partnership, partnership member or employee, corporation employee, officer, or director).

2. *Id.* § 7 (definition of knowingly).

3. *Id.* § 653w (includes offering for sale or resale).

4. *Id.* (failure to comply with these disclosure requirements is a misdemeanor punishable by imprisonment in the county jail for a period of up to 6 months, or by a fine of up to \$5,000).

5. *Id.* (tangible medium means any phonograph record, disc, wire, tape, film, audio or video cassette, or other article on which sounds are recorded).

6. *Id.*

7. *Id.* (the original manufacturer or authorized licensee of software producers is not required to disclose the names of contributing authors or programmers).

8. *Id.*

## Consumer Protection; regulation of mail order, catalog, and telephone sales

Business and Professions Code §§ 17538, 17538.3 (amended).  
AB 3076 (Frazee); 1986 STAT. Ch. 337  
Sponsor: Department of Consumer Affairs  
Support: California Chamber of Commerce

Existing law regulates mail order and catalog sales of consumer goods and services by mandating that sellers make one of several specified responses<sup>1</sup> within six weeks to most kinds of prepaid mail orders.<sup>2</sup> Chapter 337 extends these provisions to (1) sales or leases, or offers for sales or leases, of goods<sup>3</sup> and services<sup>4</sup> by telephone, radio, television, or other telecommunication device; (2) any person advertising a mailing address or telephone number in connection with the sale, lease, or advertisement of goods and services; and (3) any method of payment<sup>5</sup> a buyer might use.<sup>6</sup> In addition, Chapter 337 redefines the responses a seller or advertiser must make to a buyer<sup>7</sup> upon receipt of a prepaid order, and mandates a response within thirty days.<sup>8</sup> Within thirty days, a vendor<sup>9</sup> or advertiser must (1)

---

1. CAL. BUS. & PROF. CODE § 17538. Within six weeks the seller must (1) provide the goods or services ordered; (2) make a full refund to the buyer; (3) notify the buyer in writing of the specific duration of any expected delay, or offer the buyer substitute goods or services of equivalent or superior quality, and offer to make a full refund within one week; or (4) provide the buyer with substituted goods or services of equivalent or superior quality, if the buyer is given the opportunity to return the substitutes for a full refund and at no cost. *Id.* See also *id.* § 17538.3 (exceptions to the foregoing provisions).

2. *Id.* § 17538(e). The seller is given seven weeks to comply when the consumer makes an initial application for an open-end credit plan at the same time the goods or services are ordered, and the goods or services are purchased on credit. *Id.*

3. Compare *id.* § 17538 with 1976 Cal. Stat. ch. 1125, at 5031 (amending CAL. BUS. & PROF. CODE § 17538(f)(1)) (definition of goods amended to apply to any purchase of goods or services ordered by mail or telephone regardless of the purpose for the purchase).

4. CAL. BUS. & PROF. CODE § 17538(d)(4) (definition of services to mean work, labor, and services, including services furnished in connection with the sale or repair of goods).

5. *Id.* § 17538(a) (whether payment to the vendor is made directly, through the mail, by means of a transfer of funds from an account of the buyer or any other person, or by any other means).

6. *Id.* § 17538(a).

7. Compare *id.* § 17538 with 1976 Cal. Stat. ch. 1125, at 5031 (amending CAL. BUS. & PROF. CODE § 17538) (definition of consumer replaced by definition of buyer: A buyer is any person who seeks or acquires, by purchase or lease, any goods or services for any purpose).

8. CAL. BUS. & PROF. CODE § 17538(a). See *id.* § 17538(c) (extension of response time is lessened to 50 days when the buyer makes an initial application for an open-end credit plan, as defined in 15 U.S.C. 1682, at the same time the goods or services are ordered, and the goods or services are to be purchased on credit).

9. *Id.* § 17538(d)(5) (definition of vendor).

provide the goods or services ordered; (2) mail the buyer a full refund;<sup>10</sup> (3) notify the buyer in writing of the specific duration<sup>11</sup> of any expected delay, or offer the buyer substitute goods or services of equivalent or superior quality, and offer to make a full refund within one week;<sup>12</sup> or (4) provide the buyer with substituted goods or services of equivalent or superior quality and a notice detailing the rights of the buyer.<sup>13</sup>

Existing law regulates mail order and catalog sales and allows certain exemptions to the regulations.<sup>14</sup> Chapter 337 adds two exemptions: One for telecommunication goods and services purchased for other than primarily personal, family, or household purposes; and the other for financial services offered by specified banks<sup>15</sup> in the ordinary course of business.<sup>16</sup> In addition, Chapter 337 deletes the exemption for goods and services ordered pursuant to specified open-end credit plans that were opened prior to the order in question.<sup>17</sup>

MGN

---

10. *Id.* § 17538(a)(2) (if the buyer paid cash). If the buyer's payment was made by transfer of funds from the buyer's account, the vendor is to credit the buyer's account with the full amount of the transfer. If however, the payment was made by a third party on behalf of the buyer, the vendor is to issue a credit memorandum to the third party who is then to promptly credit the buyer's account in full. *Id.*

11. *Id.* § 17538(a)(3) (the expected delay is to be expressed as a specific number of days or weeks).

12. *Id.* Goods or services will be considered of equivalent or superior quality only if they are (1) substantially similar to the goods or services ordered; (2) fit for the usual purposes for which the goods or services ordered are used; and (3) normally offered by the vendor at a price equal to or greater than the price of the goods or services ordered. *Id.* § 17538(b). If the vendor proposes to substitute goods or services, the vendor must describe the substitutes in detail, including how they differ from the goods or services ordered. Regardless whether the vendor notifies the buyer of a delay or the vendor offers the buyer substitute goods, the vendor must offer the buyer a full refund within one week, if the buyer so requests. The vendor must provide the buyer with a toll-free telephone number or other cost-free method by which the buyer can request a full refund. *Id.* § 17538(a)(3).

13. *Id.* § 17538(a). *See id.* § 17538(a)(4). The letter must inform the buyer of (1) the right to return the substituted goods or services at the vendor's expense, (2) the right to be refunded any portion of the purchase price already paid, and (3) the detailed differences between the substituted goods or services and those actually ordered, except that obvious nontechnical differences, such as color, need not be described. *Id.* *See supra* note 12 for the required description.

14. *See* CAL. BUS. & PROF. CODE § 17538.3.

15. *Id.* § 17538.3(e) (a supervised bank, national banking association, bank holding company, or a subsidiary or affiliate thereof).

16. *Id.* § 17538.3(d), (e).

17. *Compare id.* § 17538.3 with 1974 Cal. Stat. ch. 808, at 1762 (amending CAL. BUS. & PROF. CODE § 17538.3).

## Consumer Protection; vessels—written estimates and liens

Harbors and Navigation Code §§ 410, 411, 412, 413, 414, 415, 416, 417, 418 (new); § 502 (amended).

AB 2719 (Stirling); 1986 STAT. Ch. 305

Sponsor: Author

Existing law allows a person<sup>1</sup> to obtain a lien<sup>2</sup> in compensation for services<sup>3</sup> or storage<sup>4</sup> of a registered<sup>5</sup> vessel<sup>6</sup> under specified circumstances.<sup>7</sup> Chapter 305 prohibits any repairperson<sup>8</sup> from obtaining a lien on a vessel,<sup>9</sup> unless the customer<sup>10</sup> is given either a written estimate for the cost of parts and labor or a written estimate for the maximum total repair cost.<sup>11</sup> Under Chapter 305, if the vessel must be disassembled to prepare an estimate, the repairperson must give the customer a written estimate for the cost of disassembly and reassembly.<sup>12</sup> Additionally, if the customer does not deliver the vessel for repair during normal business hours, the repairperson must prepare an estimate and contact the owner for authorization to

1. CAL. HARB. & NAV. CODE § 19 (definition of person). *See also* United States Guarantee Co. v. Matson Nav. Co., 50 Cal. App. 2d 637, 640, 123 P.2d 537, 538-39 (1942) (persons who may obtain a lien).

2. CAL. CIV. PROC. CODE § 1180; Cal. Civ. Code § 2872 (definitions of lien). *See* CAL. HARB. & NAV. CODE §§ 502(b) (amount of lien limited to \$750 unless specific authorization by owner for the amount of excess); 502 (procedural requirements for liens). *See also* Harbor Supply v. Motor Boat Astorian, 116 Cal. App. 563, 566, 2 P.2d 1004, 1005 (1931) (no lien exists for supplies unless furnished at the request of the owner, master, agent, or consignee of the vessel).

3. CAL. HARB. & NAV. CODE § 501(c) (definition of services).

4. *Id.* § 501(d) (definition of storage). *See id.* § 502(b) (requirements for storage claims).

5. CAL. VEH. CODE § 9850 (registration of vessels).

6. CAL. HARB. & NAV. CODE § 501(e) (definition of vessel).

7. *Id.* § 502(a) (the vessel must be in the repairperson's possession). *See also* Arques v. National Superior Co., 67 Cal. App. 2d 763, 768, 155 P.2d 643, 646 (1945) (value of agreed price for work constitutes a lien). *Compare* CAL. HARB. & NAV. CODE § 502 with CAL. CIV. CODE § 3068 (labor and materials liens on vehicles). *See generally* CAL. HARB. & NAV. CODE § 491 (liability of vessels).

8. *Id.* § 410(b) (definition of repairpersons).

9. *Compare id.* § 410(c) (definition of vessel) with CAL. VEH. CODE § 9840 (definition of vessel).

10. CAL. HARB. & NAV. CODE § 410(a) (definition of customer).

11. *Id.* §§ 412, 413. If authorized, a repairperson may also perform a specific job on a time and materials basis. *Id.* § 417. *See id.* § 502(c) (cost of services may exceed estimate by 10%). *Compare id.* §§ 412, 413 with CAL. BUS. & PROF. CODE § 9884.9 (requiring estimates of labor and parts charges for automotive repair). *See also* Bennett v. Hayes, 53 Cal. App. 3d 700, 704, 125 Cal. Rptr. 825, 827 (1975) (violation of estimate provision renders repair contract unenforceable by repairperson in automotive repair case).

12. *Id.* § 413(b) (customer must be informed if reassembly cannot be accomplished without repair).

undertake repair before work can begin.<sup>13</sup> Chapter 305 provides that a repairperson who has given a good faith estimate of repair costs has no obligation to complete a job for the estimated price, if unforeseen work is necessary to complete the job and the customer refuses to pay for the additional repairs.<sup>14</sup> Furthermore, Chapter 305 requires all work and parts<sup>15</sup> to be listed separately on an invoice<sup>16</sup> containing the repairperson's business name and address.<sup>17</sup> Immediate work which must be done for the preservation and safety of a vessel in distress,<sup>18</sup> and for which authorization is not expeditiously available, is not subject to the requirements of Chapter 305.<sup>19</sup>

CWG

---

13. *Id.* § 413(c). If the authorization is oral, the repairperson must make a notation on the work order and the invoice of the customer's name, date, time, and telephone number called, if any. *Id.* § 413(a), (c).

14. *Id.* § 414.

15. *Id.* § 415 (the invoice must clearly state if any used parts are supplied).

16. *Id.* (one copy of the invoice must be given to the customer and one retained by the repairperson).

17. *Id.* §§ 415, 416.

18. *Id.* § 418(b) (does not include any situation or accident caused to the vessel by the negligence or conduct of the repairperson or the repairperson's agent).

19. *Id.* § 418(a). *See id.* § 411 (repairs with an estimated cost of less than \$100 are exempt from the provisions of Chapter 305).