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Consumer Protection

University of the Pacific; McGeorge School of Law

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Consumer Protection

Consumer Protection; employment agencies

Business & Professions Code §§9984.5 (repealed); §§7011.7, 9989, 9989.1, 9989.2, 9989.3, 9989.4, 9989.5, 9989.6, 9989.7, 9989.8, 9989.9 (new); §9989, 9989.5 (amended and renumbered to §§9988.2, 9988.4); §§9961, 9962 (amended).

AB 2159 (Johnston); 1983 STAT. Ch 1301

Support: California Building Industry; Contractors' State License Board; Department of Consumer Affairs; Department of Finance

Chapter 1301 provides for the licensing and regulation of prepaid computer employment agencies¹ and job listing services² (hereinafter referred to as licensees).³ Under Chapter 1301, the monetary amount of surety bonds required of these licensees is increased.⁴

Existing law does not permit an employment agency to require nonrefundable deposits.⁵ Under prior law, however, an employment agency was exempted from this prohibition if the agency used a computer as the sole means of matching an applicant's qualifications with an employer's requirements.⁶ The employment agency, therefore, could charge either the prospective employee or employer a nonrefundable fee.⁷ Chapter 1301 revokes this exception, consequently prohibiting all employment agencies from requiring nonrefundable deposits.⁸ Chapter 1301 also requires a full refund of the applicant's advanced fee if the licensee does not provide at least three available employment opportunities meeting the contract specifications within five days after execution of the contract.⁹

1. CAL. BUS. & PROF. CODE §9989(a) (definition of prepaid computer employment agency).

2. 1983 Cal. Stat. c.1301, §4, at ____, CAL. BUS. & PROF. CODE §9989(b) (definition of job listing service). The provisions of Chapter 301 do not apply to newspapers, bona fide newsletters, magazines, trade or professional journals, or other publications of general circulation, that do not assist in locating, securing, or procuring employment. *Id.* §9989.1.

3. *Id.* §9989.2; *id.* §9989(c) (definition of licensee). Chapter 1301 also requires a licensee to provide to a job seeker a written contract with prescribed information. *See id.* §9989.4.

4. Compare *id.* §9960 with *id.* §9989.3. Existing law requires a \$3,000 surety bond to be deposited with the Bureau of Employment Agencies. *Id.* §9960. Chapter 1301 increases this bond requirement to \$10,000 for prepaid computer employment agencies. *Id.* §9989.3.

5. *Id.* §9977.

6. 1981 Cal. Stat. c. 913, §1, at 3332 (amending CAL. BUS. & PROF. CODE §9984.5).

7. *Id.*

8. 1983 Cal. Stat. c. 1301 §1, at ____ (repealing CAL. BUS. & PROF. CODE §9984.5).

9. CAL. BUS. & PROF. CODE §9989.5(a)(l). A licensee will be deemed to have supplied information meeting the applicant's specification if the information complies with

To receive a refund, the applicant must execute a written demand¹⁰ within ten days after the five-day period.¹¹ Moreover, if the job seeker¹² does not obtain a job, or demands the refund within ten days after the contract term expires, the licensee must refund any amount over and above a \$25 service charge.¹³ If the demand for refund is denied in bad faith, a court may award, in addition to the claimant's actual damages, an amount not to exceed \$200.¹⁴ The right to a refund must be stated in each contract, unless different language is approved by the Department of Consumer Affairs.¹⁵

Finally, Chapter 1301 permits the Chief of the Bureau of Employment Agencies to suspend or revoke the license of a licensee (1) if the licensee or an employee, agent, or designated agent of the licensee, violates a provision of Chapter 1301,¹⁶ or (2) if the licensee or an officer, director, or owner of twenty-five percent or more of the corporate licensee is convicted of a crime substantially related to the qualifications, functions, or duties of a prepaid computer agency or job listing service.¹⁷

contract specifications referring to (1) the type of job, (2) the applicant's interests, (3) the applicant's qualifications, (4) compensation and conditions of employment, (5) job location, and (6) any other expressly stated specification. *Id.* §9989.5(a)(2). Furthermore, if the job seeker obtains employment that lasts less than ninety days, the fee must be refunded as required by California Business and Professions Code §9974.3. *Id.* §9989.5(c).

10. The demand must be mailed by registered or certified mail to the address of a location set forth in the contract. *Id.* §9989.5(a)(2).

11. *Id.*

12. *Id.* §9989(d) (definition of job seeker).

13. *Id.* §9989.5(b).

14. *Id.* §9989.5(e). If the licensee refuses or is unable to pay the damages awarded by the court, the award may be satisfied out of the required surety bond. *Id.* See *id.* §9989.3.

15. *Id.* §9989.5(d). The provisions required in each contract are provided by Chapter 1301. *Id.* Moreover, any different language must be approved in writing by the Department of Consumer Affairs. *Id.*

16. *Id.* §9989.7(a). Any willful violation of Chapter 1301 by any person, including an officer, director, or employee of a licensee, is guilty of a misdemeanor. *Id.* §9989.9. See *id.* §9989.6 (list of violations). Whenever a licensee threatens to engage, or engages in, any act or practice that violates Chapter 1301, the Chief of the Bureau of Employment Agencies, Attorney General, district attorney, or city attorney may enjoin the action by appropriate order. *Id.* §9989.8.

17. *Id.* §9989.7(b).

Consumer Protection; advertising

Business and Professions Code §17504 (amended).

AB 762 (O'Connell); 1983 STAT. Ch 64

Support: California Department of Consumer Affairs; Consumer

Fraud Division; Ventura County District Attorney's Office

Existing law provides that a retail seller who sells consumer goods¹ in multiple units only, and who advertises the goods by price, must advertise the price of the minimum multiple unit of goods the consumer is required to buy.² The retail seller, however, is not proscribed from advertising the single unit price of the goods sold in multiple units, if the full price of the minimum multiple unit offered is equally noticeable in the advertisement.³ Under existing law, these requirements apply to any person, partnership, corporation, firm, joint stock company, association, or organization engaged in business as a retail seller of consumer goods.⁴ With the enactment of Chapter 64, retail sellers of consumer services⁵ sold only in multiple units must also comply with these advertising provisions.⁶

1. CAL. BUS. AND PROF. CODE §17504(c). Consumer good means any article that is used or bought primarily for personal, family, or household purposes, but does not include any food item. *Id.*
2. *Id.* §17504(a).
3. *Id.* §17504(b).
4. *Id.* §17504(a).
5. *Id.* §17504(d). Consumer service means any service which is obtained primarily for personal, family, or household purposes. *Id.*
6. Compare *id.* §17504(a) with 1975 Cal. Stat. c.1123, §1, at 2732 (enacting CAL. BUS. AND PROF. CODE §17504).

Consumer Protection; mail order or catalogue businesses

Business and Professions Code §17538.5 (amended).

AB 761 (O'Connell); 1983 STAT. Ch 549

Support: Consumer Fraud Division; Ventura County District Attorney's Office

Opposition: California Department of Finance; California Peace Officers Association; Department of Consumer Affairs

Existing law provides that any person within the state of California who conducts a mail order or catalogue business for the sale of consumer goods or services and who uses a post office box address, must disclose the legal name of the business and the complete street address where the business is actually conducted in all advertising and promotional materials.¹ A failure to reveal this information to consumers is punishable as a misde-

1. CAL. BUS. AND PROF. CODE §17538.5.

meanor.² Chapter 549 extends the specified misdemeanor penalties to persons who use a street address primarily for the receipt or delivery of mail, or as the site of a telephone answering service, and who fail to divulge the legal name and street address of the mail order or catalogue enterprise.³

2. *Id.* The punishment is imprisonment in the county jail for a period not to exceed six months, a fine not to exceed \$2,500, or both. *Id.*

3. *Compare id.* §17538.5 with 1976 Cal. Stat. c.1125, §8, at 5032 (amending CAL. BUS. AND PROF. CODE §17538.5).

Consumer Protection; sales presentations

Business and Professions Code §17533.8 (amended).

AB 1993 (Tanner); 1983 STAT. Ch 727

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

Under existing law, it is unlawful for a person to offer a prize or gift by mail, telephone, or in person, with the intent to make a sales presentation, without disclosing this intent in clear and unequivocal language.¹ With the enactment of Chapter 727, a person may not offer a prize or gift by any other means or in any other form without revealing that the purpose of the offer is to make a sales presentation.² Specified publishers and broadcasters³ are exempt from liability, however, if an advertisement or offer is published or broadcast in good faith and without knowledge of the violation.⁴

1. CAL. BUS. AND PROF. CODE §17533.8. The intent to make a sales presentation must be expressed at the time the prize or gift is offered. *Id.*

2. *Compare id.* §17533.8(a) with 1976 Cal. Stat. c. 222, §1, at 420 (amending CAL. BUS. AND PROF. CODE §17533.8).

3. These include publishers of newspapers, periodicals, or other publications, radio or television broadcasters, or owners or operators of cable, satellite, or other mediums of communication. CAL. BUS. AND PROF. CODE §17533.8(b).

4. *Id.*

Consumer Protection; energy conservation products and services

Business and Professions Code §17537.5 (new).

SB 522 (Rosenthal); 1983 STAT. Ch 243

Support: Department of Consumer Affairs; Southern California Gas

and Electric

Existing law provides misdemeanor¹ and civil² penalties for false or misleading advertising.³ To specifically address the problems created by individuals who fraudulently sell or misrepresent energy conservation products or services to the public, Chapter 243 was enacted.⁴ Under Chapter 243, persons⁵ engaged in the solicitation of sales or orders for energy conservation products or services are prohibited from (1) falsely claiming an affiliation or association with utility companies or their energy conservation programs,⁶ (2) falsely representing that a purchase is legally required,⁷ or (3) misrepresenting either the nature of the purchaser's obligation for the purchase price⁸ or the tax consequences of the purchase.⁹ Any person violating the provisions of Chapter 243 by any method at any location¹⁰ is liable for damages of two times the amount of the sale price, or up to \$250, whichever is greater.¹¹ In addition, all other penalties provided by existing law for false or misleading advertising may be imposed.¹²

1. CAL. BUS. & PROF. CODE §17534 (violation of advertising statute is a misdemeanor); CAL. PENAL CODE §19 (punishment for a misdemeanor).

2. CAL. BUS. & PROF. CODE §§17500.3(c), 17536(a) (fines and damages); *see also id.* §§17535.5 (injunctive remedy and fine for violation), 17534.5 (remedies are cumulative).

3. *See generally id.* §§17500-17572.

4. *See* Senator Herschel Rosenthal, News Release, July 14, 1983, (copy on file at the *Pacific Law Journal*).

5. Persons include any individual, partnership, firm, association, or corporation. CAL. BUS. & PROF. CODE §17506.

6. *Id.* §17537.5(a)(1).

7. *Id.* §17537.5(a)(2).

8. *Id.* §17537.5(a)(3).

9. *Id.* §17537.5(a)(4).

10. This includes solicitation at a residence or by telephone. *Id.* §17537.5(b).

11. *Id.*

12. *See supra* note 2 (penalties under existing law).

