



1-1-1989

## 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*, 20 PAC. L. J. 503 (1989).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol20/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; car rental insurance

Civil Code § 1936 (new); Business and Professions Code § 22325 (new).

AB 3006 (Connelly); 1988 STAT. Ch. 1523

SB 2464 (Kopp); 1988 STAT. Ch. 466

Sponsor: Attorney General

Support: Car Rental Industry excluding Alamo Rent-a-Car;  
Consumer's Union

Opposition: Alamo Rent-a-Car

Chapter 1523 regulates the sale of collision damage waivers<sup>1</sup> by car rental companies by requiring detailed disclosure of information requirements,<sup>2</sup> specific conditions of application,<sup>3</sup> and by limiting the cost of waivers.<sup>4</sup> Chapter 1523 also prohibits rental companies from requiring renters to purchase optional goods and services, such as insurance or damage waivers,<sup>5</sup> and from engaging in any unfair practices designed to induce renters to make such purchases.<sup>6</sup> Chapter 1523 provides that rental car companies may advertise, quote, and

---

1. CAL. CIV. CODE § 1936(a)(4) (damage waiver is defined as a rental company's agreement not to hold a renter liable for damage or loss related to the rental vehicle, for loss of use of the vehicle, or any storage, impound, towing, or administrative charges).

2. *Id.* § 1936(g) (requiring clear and conspicuous disclosure of information regarding the renter's liability, the renter's own insurance coverage, and the availability of the damage waiver). *See id.* § 1936(i) (advertisement of rental rates must clearly state the damage waiver charge and that the waiver is optional). *See also* 1988 Cal. Stat. 466, sec. 1, at \_\_\_\_\_, enacting CAL. BUS. & PROF. CODE § 22325(a) (requiring disclosure to rental car customers that the collision damage waiver offered may be duplicative of the coverage provided by the customers' own auto insurance).

3. CAL. CIV. CODE § 1936(e)(1), (2). *See generally id.* §§ 1936(f)(1) (damage waiver will not apply if damage is due to an authorized driver's intentional, willful, wanton, or reckless conduct, or to driving while under the influence of drugs or alcohol, or to towing or pushing anything, or to driving on an unpaved road), 1936(f)(2) (damage waiver will not apply if damage occurs while the vehicle is used for commercial or felonious purposes, while in a speed race, used for driver training, while operated by an unauthorized driver, or outside of the United States), 1936(f)(3) (damage waiver will not apply if the rental is based on fraudulent or false information provided to the rental company). Any other limitation, exception, or exclusion to a damage waiver is void and unenforceable. *Id.* § 1936(e)(2).

4. CAL. CIV. CODE § 1936(h) (limiting the per day charge for damage waiver).

5. *Id.* § 1936(j)(1).

6. *Id.* § 1936(j)(2) (including refusing the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card).

charge only those rates that represent the full amount of the rental,<sup>7</sup> and prohibits charging additional fees or surcharges as conditions of the rental.<sup>8</sup> Chapter 1523 limits the total liability of one who rents an automobile to certain costs incurred as a result of collision or theft of the automobile.<sup>9</sup>

LLG

---

7. *Id.* § 1936(l)(1)-(2) (fees to include taxes, mileage charges, and any optional charges, such as insurance, one way fees, or refueling).

8. *Id.* § 1936(l)(1) (charges include, but are not limited to, fuel or airport surcharges, or any fee for transporting the renter to the location of the rented vehicle).

9. *Id.* § 1936(b)(1)-(7), (c)(1)-(7) (renter's liability may be limited by an agreement between the rental company and the renter to parts and labor for repairs of physical damage, loss of use, towing, storage and impound fees paid, and administrative charges). *See supra* note 3 (providing when damage waiver does not apply).

### Consumer Protection; consumer credit—finance charges

Civil Code §§ 1805.1a, 1805.3, 1805.5, 1808.6 (repealed and new); §§ 1805.1, 1806.3, 1807.2, 1808.5, 1810.2 (amended, repealed, and new).

SB 2592 (Dills); 1988 STAT. Ch. 479

(Effective January 1, 1992)\*

(Expires January 1, 1992)\*\*

Prior law allowed finance charges<sup>1</sup> to be assessed on certain retail installment contracts.<sup>2</sup> Prior law also set limitations on finance charges that could be assessed on sales made pursuant to retail installment contracts or retail installment accounts.<sup>3</sup> Chapter 479 eliminates those limitations and specifies that the holder of a contract<sup>4</sup> may not charge, collect, or receive a finance charge exceeding the amount

---

\* Sections 1805.1a, 1805.3, 1805.5, 1808.6 of the California Civil Code become effective January 1, 1992.

\*\* Sections 1805.1, 1806.3, 1807.2, 1808.5, 1810 of the California Civil Code remain effective until January 1, 1992, when they expire.

1. CAL. CIV. CODE § 1802.10 (definition of finance charge).

2. 1985 Cal. Stat. ch. 227, sec. 2, at 1239 (amending CAL. CIV. CODE § 1805.1). *See* CAL. CIV. CODE § 1802.6 (definition of retail installment contract).

3. 1985 Cal. Stat. ch. 227, sec. 2, at 1239 (amending CAL. CIV. CODE § 1805.1); 1985 Cal. Stat. ch. 227, sec. 4, at 1241 (amending CAL. CIV. CODE § 1810.2). *See* CAL. CIV. CODE § 1802.7 (definition of retail installment account).

4. *Id.* § 1802.13 (definition of holder of contract).

disclosed to the buyer.<sup>5</sup> Chapter 479 prohibits an annual fee or charge to be made in any retail installment contracts.<sup>6</sup>

Existing law allows the holder of a retail installment contract to refinance the amount owing on the contract and assess a refinance charge based on the amount refinanced.<sup>7</sup> Chapter 479 deletes provisions that limited the amount of the refinance charge and prohibited the assessment of an administrative finance charge.<sup>8</sup> Chapter 479 further deletes provisions that: (1) Limited the amount of finance charges; (2) prohibited administrative finance charges;<sup>9</sup> and (3) limited the assessment of a minimum finance charge to one time in a series of add-on transactions.<sup>10</sup>

JMS

---

5. *Id.* §§ 1805.1, 1810.2. *See id.* § 1803.3 (disclosures required in retail installment contracts).

6. *Id.* § 1805.1.

7. *Id.* § 1807.2 (refinancing must be agreed upon in writing by the buyer). Refinance charge is also based on additional cost of insurance and official fees, after the reduction of a refund credit. *Id.*

8. *Id.* Compare CAL. CIV. CODE § 1807.2 with 1981 Cal. Stat. ch. 1075, sec. 10, at 4120 (amending CAL. CIV. CODE § 1807.2).

9. CAL. CIV. CODE § 1808.5. Compare CAL. CIV. CODE § 1808.5 with 1979 Cal. Stat. ch. 805, sec. 16, at 2781 (amending CAL. CIV. CODE § 1808.5).

10. 1988 Cal. Stat. ch. 479, sec. 8, at \_\_\_\_ (repealing CAL. CIV. CODE § 1808.6).

## Consumer Protection; contractors—home solicitation contracts

Civil Code § 1689.5 (amended).

AB 2938 (Quackenbush); 1988 STAT. Ch. 1104

Sponsor: California Association of Sheet Metal and Air Conditioning Contractors

Support: Plumbing, Heating, Cooling Contractors of California; Builders Exchanges Legislative Network

Under existing law, a buyer has the right to cancel a home solicitation contract.<sup>1</sup> Chapter 1104 provides that a contract for repair

---

1. CAL. CIV. CODE § 1689.6(a). The buyer may cancel a home solicitation contract until midnight of the third business day after the buyer signs a contract to purchase. *Id.* The home solicitation contract must: (1) Be written in the same language as used in the oral sales presentation, dated, signed by the buyer, and contain a conspicuous statement in immediate proximity to the buyer's signature line that the buyer may cancel the transaction prior to

services<sup>2</sup> is not a home solicitation contract if: (1) It is initiated by the prospective buyer, (2) the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer, and (3) the contract price is less than one hundred dollars.<sup>3</sup>

JEP

---

midnight of the third business day after the transaction; (2) contain the seller's name and address on the first page and the date the buyer signed the contract; and (3) be accompanied by a completed notice of cancellation in the same language as used in the contract. *Id.* § 1689.7(a)-(c). The seller must provide the buyer with a copy of the contract and notice of cancellation and inform the buyer orally of his right to cancel at the time the home solicitation contract is executed. *Id.* § 1689.7(d). The buyer may cancel the contract until the seller has complied with the above requirements. *Id.* § 1689.7(e). See generally *id.* § 1689.5(a) (definition of home solicitation contract).

2. The contract for repair services must be with a contractor licensed pursuant to Chapter 9 of Division 3 of the Business and Professions Code. CAL. CIV. CODE § 1689.5(a).

3. *Id.*

## Consumer Protection; dance studio contracts

Civil Code §§ 1812.51a (repealed); 1812.50, 1812.51, 1812.52, 1812.53, 1812.54, 1812.55, 1812.56, 1812.57, 1812.59, 1812.60, 1812.63, 1812.64, 1812.65, 1812.67 (amended).

SB 1896 (Rosenthal); 1988 STAT. Ch. 1043

Existing law protects the public from unfair contracts for commercial dance studio lessons.<sup>1</sup> With the enactment of Chapter 1043, these safeguards extend to all dance studio contracts<sup>2</sup> except contracts

---

1. CAL. CIV. CODE § 1812.50 (the intent of the legislature is to protect the public from unscrupulous dance studios). See *People v. Arthur Murray, Inc.*, 238 Cal. App. 2d 333, 343, 47 Cal. Rptr. 700, 707 (1965) (the legislature's intent and purpose was to protect the public against fraud, deceit, imposition, and financial hardship in the field of dance studio services by prohibiting and restricting false or misleading advertising and other unfair and dishonest or deceptive practices). See also *Porter v. Arthur Murray, Inc.*, 249 Cal. App. 2d 410, 57 Cal. Rptr. 554 (1967) (the court ordered the dance studio to refund in excess of \$30,440 to a 60 year old man who was sold thousands of hours of dance studio lessons).

2. CAL. CIV. CODE §§ 1812.50-1812.68 (Contracts for Dance Studio Lessons and Other Services). Every contract for commercial dance studio lessons must: (1) Be in writing, (2) be in an amount not to exceed \$3,750, with payments not extended over a period of two years from entering the contract or measured by the buyer's life, and (3) have a maximum term of seven years. *Id.* §§ 1812.52, 1812.53. In addition, existing law requires contract performance for commercial dance studio lessons to begin within 12 months and any customer to have permission to cancel a contract and receive a refund for unused lessons if notice is given within 180 days. *Id.* §§ 1812.54(a), (b). Existing law also requires that the contract state the hourly rate charged and the existence of a bond that is 25% of the studio's previous yearly income. *Id.* §§ 1812.54(c), (d), 1812.64.

concerning instruction involving only ballet, jazz, or tap dance<sup>3</sup> to persons under the age of twenty-one if: (1) the contract can be cancelled,<sup>4</sup> (2) the contract price does not exceed \$500,<sup>5</sup> and (3) the dance lessons will be offered within four months from entering the contract.<sup>6</sup>

CEL

---

3. *Id.* § 1812.67(b) (or any combination thereof).

4. The cancellation must occur within three days after the first lesson or after moving more than fifteen miles away from the studio, and the refund of lessons not yet received must be made within ten days of cancellation. *Id.* § 1812.67(b)(3).

5. *Id.* § 1812.67(b)(1).

6. *Id.* § 1812.67(b)(2). Chapter 1043 excludes from the foregoing safeguards any organization that has qualified for tax exemption and received a direct grant of funds from the California Arts Council. *Id.* § 1812.67(c).

## Consumer Protection; Home Equity Loan Disclosure Act

Civil Code §§ 2970, 2971 (new).

AB 3917 (Johnston); 1988 STAT. Ch. 1315

Chapter 1315 requires all lenders<sup>1</sup> of home equity loans<sup>2</sup> to inform a borrower that in the event of default the borrower risks the loss of their home.<sup>3</sup>

HSP

---

1. CAL. CIV. CODE § 1921(a)(1) (definition of lender).

2. *Id.* § 2970 (home equity loan defined as any open end consumer credit plan which gives the lender a security interest in the borrower's home).

3. *Id.* § 2971(a)(1),(2). This disclosure must be made by either a separate and specific document attached to or accompanying the loan application or by a statement clearly visible within the application. *Id.* § 2971(b)(1),(2). If the consumer applies in person the disclosure must be made at that time; if the consumer applies by mail or telephone the disclosure must be made within three days. *Id.* § 2971(a).

## Consumer Protection; mobilehome recovery fund

Health and Safety Code § 18070.6 (new); §§ 18021.5, 18070.2, 18070.3 (amended).

SB 2064 (Craven); 1988 STAT. Ch. 1289

(Effective September 24, 1988)

Sponsor: Golden State Mobilehome Owner's League

Support: Department of Housing and Community Development

Existing law provides for the Mobilehome Recovery Fund.<sup>1</sup> Chapter 1289 extends Mobilehome Recovery Fund eligibility to include claims by sellers who sold mobilehomes used by them for personal, family, or household residential purposes.<sup>2</sup> Buyers or sellers of mobilehomes used for personal, family, or household residential purposes who obtained an administrative determination<sup>3</sup> against a bankrupt licensee are also eligible to file a claim for payment under the fund.<sup>4</sup>

In order to recover from the fund on a claim based on a final judgment, existing law requires a claimant to execute judgment against all the assets of the judgment debtor or present evidence that the debtor is judgment proof.<sup>5</sup> Before a claim based on an administrative determination is paid out of the fund, Chapter 1289 requires the claimant to present evidence that the licensee is or has been the subject of bankruptcy proceedings and has assigned to the department any interest in the actual and direct loss in the amount the claimant recovers from the fund.<sup>6</sup> Chapter 1289 requires a claimant who is a

---

1. CAL. HEALTH & SAFETY CODE § 18070 (creating the Mobilehome Recovery Fund).

2. *Id.* § 18070.3(a).

3. Administrative determination means either an order of restitution or a finding of actual and direct loss which is adopted by the Department of Housing and Community Development as part of its final decision in the underlying case. *Id.* § 18070.3(b). The department may seek restitution for any monetary loss to a purchaser, seller, licensee, financing agency, governmental agency, or other person or entity suffering a loss. *Id.* § 18021.5(d). In any disciplinary hearing before an administrative law judge concerning licensing, the judge is required to make findings concerning: (1) The amount of the actual and direct loss as a result of fraud, willful misrepresentation, or breach of warranty or guarantee; and (2) the amount of the department's investigative and enforcement costs up to and including the date of the hearing. *Id.* § 18021.5(e). *See id.* § 18070.6 (the department may be reimbursed from the fund for its investigative and enforcement costs in any claim ordered to be paid based on an administrative determination).

4. CAL. HEALTH & SAFETY CODE § 18070.3(a) (applies to bankrupt licensees who are or have been the subject of bankruptcy proceedings). The legislature has determined that Chapter 1289 is necessary for the immediate preservation of the public peace, health, or safety in order to prevent bankruptcies from hindering the proper operation of the Mobilehome Recovery Fund. 1988 Cal. Stat. ch. 1289, sec. 4, at \_\_\_\_.

5. CAL. HEALTH & SAFETY CODE § 18070.3(f)(1).

6. *Id.* § 18070.3(f)(2). The claim must be filed within one year from either the termination of bankruptcy proceedings or the effective date of the department's decision adopting the administrative determination whichever is . *Id.* § 18070.3(g).

seller of a mobilehome used for personal, family, or household residential purposes to show that a good faith effort has been made to secure the debt from the sale of the mobilehome.<sup>7</sup> Chapter 1289 limits the amount of all claims to the actual and direct loss<sup>8</sup> that remains unreimbursed from any source.<sup>9</sup>

JMS

---

7. *Id.* § 18070.3(h)(4) (a claimant may demonstrate a good faith effort by providing the department with a promissory note signed by the debtor and secured by collateral having a reasonable value at least equal to the debt).

8. Actual and direct losses include court costs and reasonable attorney fees not to exceed 15 per cent of the judgment or administrative determination. *Id.* § 18070.3(c). Claims may be filed only after the termination of all proceedings, including appeals. *Id.* 18070.3(a). Claims must arise directly out of transactions which occurred on or after January 1, 1985. *Id.*

9. *Id.* § 18070.3(d) (maximum payment with respect to any one sales transaction on a new or used mobilehome is limited to the amount of the judgment or administrative determination plus attorney fees, whichever is less, but in no event more than \$40,000).

## Consumer Protection; money exchange houses—disclosure requirements

Business and Professions Code §§ 22515, 22516, 22517, 22518, 22519, 22520 (new).

SB 1723 (Deddeh); 1988 STAT. CH. 433

Chapter 433 requires window, exterior, and interior signs, at a money exchange house<sup>1</sup> to state clearly the rate of exchange for the buying and selling of dollars.<sup>2</sup> Additionally, all interior signs and advertising must clearly state commissions and fees charged on all transactions.<sup>3</sup> Chapter 433 makes it unlawful for a money exchange house to advertise “no commission” if a commission or fee is

---

1. CAL. BUS. & PROF. CODE § 22515(a) (definition of money exchange house).

2. *Id.* § 22516(a),(b). See *id.* § 22515(c) (definition of buying dollars). *Id.* § 22515(d) (definition of selling dollars).

3. *Id.* § 22516(b). The interior signs must contain all information regarding rates of exchange and fees, must be in clear view of customers at each point of exchange, and must be printed in English. *Id.* § 22516(b), (c). Advertising must also state the rates of exchange. *Id.* § 22516(b).

charged.<sup>4</sup> Finally, Chapter 433 requires that a receipt containing specified information be presented to a customer for each exchange.<sup>5</sup>

JM

---

4. *Id.* § 22517.

5. *Id.* § 22518. The receipt must clearly state the rate of exchange for the particular transaction, the amount of commission or fees, the net exchange after all fees and commissions have been deducted, the total amount of currency presented by the customer, and the total amount of currency returned to the customer. *Id.* A violation of Chapter 433 is punishable by a fine of not less than \$100 for the first offense, and a fine of not less than \$500 for each subsequent offense. *Id.* § 22519. Chapter 433 does not limit the effect of any other state or local ordinance governing money exchange house regulations or penalties for violation of regulations. *Id.* § 22520.

## Consumer Protection; motor homes—new motor vehicle warranties

Civil Code § 1793.2 (amended).

AB 4513 (Tanner); 1988 STAT. Ch. 697

Under existing law, a motor vehicle manufacturer or its representative must replace a vehicle or reimburse the buyer if unable to conform the goods to meet the applicable express warranties.<sup>1</sup> Chapter 697 extends these motor vehicle warranty protections to purchasers of motor homes.<sup>2</sup>

ERK

---

1. CAL. CIV. CODE § 1793.2(d)(1). A manufacturer or its representative may make a reasonable number of attempts to repair the vehicle before replacement or reimbursement. *Id.* Reimbursement must equal the purchase price less the amount attributable directly to the buyer's use of the vehicle prior to discovery of the problem. *Id.* The buyer is free to elect restitution and may not be forced to accept a replacement vehicle. *Id.* § 1793.2(d)(2). *See id.* §§ 1793.2(d)(2)(A) (stating requirements for replacement), 1793.2(d)(2)(B) (providing requirements for restitution), 1793.2(d)(2)(C) (outlining methods for calculation of amounts payable in connection with replacement or restitution), 1793.2(e)(1) (definition of reasonable number of attempts).

2. CAL. CIV. CODE § 1793.2(e)(4)(B) (including certain portions of a motor home in the new definition of motor vehicle). New motor vehicle includes the chassis, chassis cab, and the portion of a motor home which propels it, but does not refer to any portion of a motor vehicle designed or used primarily for human habitation. *Id.* *See id.* § 1793.2(e)(4)(C) (definition of motorhome).

**Consumer Protection; motor vehicles—sales and advertising**

Vehicle Code §§ 430, 665, 11713 (amended).

AB 582 (Harris); 1988 STAT. Ch. 1583

Support: Southgate City Employees Credit Union; SGV Public Schools Credit Union; Tiger Federal Credit Union; San Diego Teachers' Credit Union; Los Angeles Federal Credit Union; McCulloch Federal Credit Union; Southern California Standard Employees' Credit Union; Kern-Tulane State and Federal Employees Credit Union; Schools Federal Credit Union; Autoland; Select-A-Car; National Auto Brokers, Inc.; Harrison Sales and Leasing; O'Connor Auto Brokers; Auto Purchase Consulting, Inc. Opposition; California Auto Dealers Association; State of California New Motor Vehicle Board; Ford Motor Co.; General Motors Corp.; Auto Dealers for Fair Government

Existing law regulates advertising by motor vehicle dealers.<sup>1</sup> Chapter 1583 allows a dealer who does not hold a franchise<sup>2</sup> on a particular line or make of new vehicle<sup>3</sup> to advertise such a vehicle for resale,<sup>4</sup> provided that the advertisement discloses that the dealer is not franchised to sell or service such a new vehicle, and that such vehicles are purchased as used<sup>5</sup> and are available from a franchised dealer.<sup>6</sup>

Chapter 1583 also prohibits a licensed motor vehicle dealer from selling a previously unregistered vehicle without providing a written disclosure to the buyer stating the date on which the manufacturer's or distributor's warranty begins.<sup>7</sup> In addition, Chapter 1583 prohibits a dealer from consigning a new vehicle for sale to another dealer.<sup>8</sup> Finally, Chapter 1583 places certain restrictions on purchase deposits taken by motor vehicle dealers.<sup>9</sup>

LLG

1. CAL. VEH. CODE § 11713(b). *See id.* § 285 (definition of dealer).

2. *Id.* § 331 (definition of franchise).

3. *Id.* § 430 (definition of new vehicle). Chapter 1583 declares that a previously unregistered vehicle is considered new for purposes of financing only. *Id.*

4. *Id.* § 11713 (b).

5. *Id.* § 665 (definition of used vehicle).

6. *Id.* § 11713(b).

7. *Id.* § 11713(o).

8. *Id.* § 11713(q).

9. *Id.* § 11713(p). A dealer may not accept a purchase deposit unless the vehicle is either at the dealer's premises, or immediately available to the dealer from the manufacturer or distributor. *Id.* If a dealer accepts a purchase deposit for the sale of a vehicle for which the dealer does not have a franchise, the deposit is subject to all of the following conditions: There must be a written purchase order; the deposit is limited to 2.5 percent of the purchase price; the deposit must be deposited in a trust fund in the name of the buyer; the deposit

---

must be fully refundable upon written notice to the dealer; the purchaser must be given written notification of the right to rescind the contract prior to delivery; and the purchase agreement must contain a liquidated damages provision relating to default under the purchase agreement, without limiting the dealer's right to offset against funds held in favor of the purchaser in a trust account. *Id.* § 11713(p)(i)-(vi).

## Consumer Protection—public utilities

Government Code § 60370, 60371, 60372, 60373, 60374 (new).  
AB 3284 (Moore); 1988 STAT. Ch. 422.

Under existing law certain districts<sup>1</sup> supplying residential electrical, gas, heat, and water services must follow uniform proceedings when terminating customers' supplies.<sup>2</sup> Chapter 422 extends these requirements to all districts.

ERK

- 
1. CAL. GOV'T CODE § 60370 (definition of district).
  2. CAL. PUB. UTIL. CODE §§ 779-780.
  3. CAL. GOV'T CODE §§ 60371(a), 60372(a), (b), 60373(a)-(3).

## Consumer Protection; service contracts

Civil Code §§ 1791, 1794.4, 1794.41 (amended).  
AB 4570 (Duplissea); 1988 Cal. STAT. Ch. 581\*

Under existing law, a service contract<sup>1</sup> may be sold to a buyer<sup>2</sup> instead of or in addition to an express warranty.<sup>3</sup> When the service contract covers a home appliance<sup>4</sup> or a home electronic product,<sup>5</sup> Chapter 581 requires the contractor to provide the consumer with all the service and parts necessary to ensure proper functioning of the product under normal operation.<sup>6</sup> Chapter 581 also extends certain existing regulations covering motor vehicles to include home appli-

- 
- \* Civil Code sections 1794.4(d), 1794.41(c) are effective July 1, 1989.
1. CAL. CIV. CODE § 1791(o) (definition of service contract).
  2. *Id.* § 1791(b) (definition of buyer).
  3. *Id.* § 1794.4(a). The service contract must clearly disclose its terms, conditions, and exclusions. *Id.* Chapter 581, however, does not apply to home protection contracts. *Id.* See generally CAL. INS. CODE §§ 12740-12764 (pertaining to home protection).
  4. CAL. CIV. CODE § 1791(r) (definition of home appliance).
  5. *Id.* § 1791(s) (definition of home electronic product).
  6. *Id.* § 1794.4(b). Parts and service are to be provided for the life of the contract at no additional charge. *Id.*

ances and home electronic products.<sup>7</sup> Finally, Chapter 581 requires disclosure of certain information in all service contracts on home appliances and home electronic products.<sup>8</sup>

LLG

---

7. *Id.* § 1794.41(a). The buyer may cancel the contract within 30 days after receipt of the contract, if the buyer provides written notice, and if no claims have been made against the contract. *Id.* § 1794.41(a)(3)(A)). A buyer has 30 days to inspect the contract. *Id.* A buyer is entitled to a pro rata refund upon giving the seller written notification of the cancellation. *Id.* § 1794.41(a)(3)(B).

8. *Id.* § 1794.4(c)(1)-(8). The contract must include details on the following: (1) The description of the product involved; (2) the commencement and duration of the contract; (3) any limitations on transfer or assignment of the contract, if applicable; (4) the general obligations of the service contractor and the buyer; (5) the procedure the buyer must follow to procure performance of the contract; (6) the procedure the contractor must follow to fulfill the obligation; (7) the right to cancel, if applicable; and (8) any dispute settlement process. *Id.*

## Consumer Protection; telephone information-access services

Public Utilities Code § 2884.5 (new).

AB 3833 (Moore); 1988 STAT. Ch. 567

(Effective June 21, 1988)

Support: Contra Costa Board of Supervisors; California Parent Teachers Association

Existing law provides that residential subscribers to telephone service must have the option of blocking access to information service or "976" numbers<sup>1</sup> on their home telephones.<sup>2</sup> Chapter 567 provides that the Public Utilities Commission (PUC)<sup>3</sup> must require information services providing telephone messages constituting harmful matter<sup>4</sup> to furnish access to such matter on a subscription basis only.<sup>5</sup>

KAB

---

1. "976" service is a class of information-access telephone service in which recorded messages are provided for a fee additional to the local exchange charge. CAL. PUB. UTIL. CODE § 2884(a).

2. *Id.* The PUC must not charge telephone subscribers a fee for blocking. *Id.* The PUC must also require every telephone corporation that furnishes "976" service to make available a separate telephone prefix number for those messages termed harmful, as well as those messages that are not harmful. 1988 Cal. Stat. ch. 201, sec. 1, at (amending CAL. PUB. UTIL. CODE § 2884(b)). The PUC also requests that every information service provider designate which prefix corresponds to which type of message. *Id.*

3. CAL. CONST. art XII, §§ 22, 23 (definition and duties of PUC).

4. CAL. PENAL CODE § 313 (definition of harmful matter).

5. CAL. PUB. UTIL. CODE § 2884.5. See generally, Kugelmass, *Will the Plug be Pulled on Free Speech?* SACRAMENTO BEE, August 21, 1988, Forum at 1. (regulation of information-access services by telephone companies or the judiciary).

## Consumer Protection; unfair business practices—senior citizens and disabled persons

Business and Professions Code § 17206.1 (new); Civil Code § 3345 (new); §§ 1761, 1780 (amended).

SB 1157 (Davis); 1988 STAT. Ch. 823

Sponsor: Department of Consumer Affairs

Support: American Association of Retired People

AB 3756 (Stirling); 1988 STAT. Ch. 1343

Support: Consumers' Union; California Trial Lawyers Association; Attorney General

Under existing law, any person engaging in unfair business practices<sup>1</sup> is subject to a \$2,500 fine for each violation.<sup>2</sup> Chapter 823 imposes an additional fine of up to \$2,500 on one who commits an unfair act directed toward a disabled person<sup>3</sup> or senior citizen.<sup>4</sup> Restitution may also be ordered, and has preference over civil recovery.<sup>5</sup> Existing law also provides for punitive damage awards for civil plaintiffs injured through unfair methods of competition or unfair, deceptive acts.<sup>6</sup> Under Chapter 823, the trier of fact may increase the amount of the fine up to three times greater than the sum authorized by statute if the trier of fact determines that these types of unlawful acts are directed toward senior citizens or disabled persons.<sup>7</sup> Chapter 1343 increases the minimum award for actual damages in consumer class action suits from \$300 to \$1000.<sup>8</sup>

Under existing law, any senior citizen or disabled person bringing an action under the Consumer Legal Remedies Act (Act)<sup>9</sup> may be

---

1. CAL. BUS. & PROF. CODE § 17200 (definition of unfair business practices); CAL. CIV. CODE § 1770 (listing illegal activities).

2. CAL. BUS. & PROF. CODE § 17206(a).

3. See generally *id.* § 17206.1(b)(2) (definition of disabled person).

4. *Id.* § 17206.1(a). To determine whether to impose this additional liability, the court must consider, among any other appropriate factors, whether: (1) The defendant knew or should have known his or her conduct was directed toward a senior citizen or disabled person; (2) the defendant's action caused a senior citizen or disabled person to suffer loss of an asset essential to his or her health and welfare; and (3) a senior citizen or disabled person is more susceptible to harm than others from the defendant's illegal conduct. *Id.* § 17206.1(c). See generally *id.* § 17206.1(b)(1) (definition of senior citizen).

5. *Id.* § 17206.1(d).

6. CAL. CIV. CODE § 1780(a)(4).

7. *Id.* § 3345(b). This award determination is to be based on a finding of one or more of three factors. *Id.* § 17206.1(c) (providing the three factors in determining an award). When no statute sets a specific limit on punitive damage awards, the trier of fact may impose a penalty up to three times greater than would be imposed in a case not involving a senior citizen or disabled person. CAL. CIV. CODE § 3345(b).

8. CAL. CIV. CODE § 1780(a)(1).

9. CAL. CIV. CODE § 1780(a)(1)-(4) (allowing actions under the Consumer Legal Remedies Act).

awarded up to \$5000, in addition to the existing remedies specified by law.<sup>10</sup> Chapter 1343 mandates that a prevailing plaintiff under the Act is entitled to receive court costs and attorney's fees.<sup>11</sup>

However, a defendant may be awarded reasonable attorney's fees if the court finds that the plaintiff's case was not brought in good faith.<sup>12</sup>

ERK

---

10. *Id.* § 1780(b). To award this additional amount, the trier of fact must: (1) Determine that the consumer has suffered substantial physical, emotional, or economic damage due to the defendant's conduct; (2) find that an additional award is appropriate; (3) make an affirmative finding of one of three factors. *Id.* See also *id.* § 7206.1(c) (providing the three factors in determining an award). See generally *id.* § 1780(a)(1)-(5) (existing remedies under the Act). In addition, Chapter 823 extends the definition of goods under the Act to include leased goods. *Id.* § 1761(a).

11. CAL. CIV. CODE § 1780(d).

12. *Id.*

## Consumer Protection; vehicle leasing

Civil Code § 2985.71 (amended).

AB 3135 (Eastin); 1988 STAT. Ch. 342

Sponsor: Attorney General's Office

Support: California Automobile Dealer's Association; National Vehicle Leasing Association

Existing law specifies disclosure requirements for advertising consumer leasing of automobiles.<sup>1</sup> Federal law also specifies disclosure requirements for advertising consumer leasing of automobiles, but sets forth several requirements not found in California law.<sup>2</sup> Chapter

---

1. CAL. CIV. CODE § 2985.71. If any solicitation to enter into a lease contract includes a statement of the amount of any payment, the number of required payments, or that any capitalized cost reduction or other payment is required at the inception of the lease, the solicitation must include the following information: (1) A statement that the transaction advertised is a lease; (2) if the lessee is to bear the risk of the vehicle's depreciation, the value placed on the vehicle at the inception of the lease; (3) the amount, if any, required by the lessor as a security deposit, advance periodic payment, or other prepayment; (4) the term of the lease expressed in months, and the total amount of periodic payments; and (5) if the lessee is to bear the risk of the vehicle's depreciation, the maximum for which the lessee could be held liable. *Id.* See generally Review of Selected 1976 Legislation, 8 PAC. L.J. 165, 430 (1977) (discussing protections to long term lessees of automobiles).

2. Advertising, 12 C.F.R. § 213.5. *Id.* §§ 213.5(a) (prohibiting solicitations to lease specific vehicles at specified terms unless the lessor customarily leases or will lease such vehicles at those amounts or terms), 213.5(a)(1) (requiring that the disclosures are set forth clearly and

342 conforms state law to federal law.<sup>3</sup> Chapter 342 eliminates any confusion resulting from lessors having to comply with two different sets of rules.<sup>4</sup>

*KH*

---

conspicuously), 213.5(c) (requiring disclosure rules to apply in lease contracts solicitations which include a statement of any or no down payment), 215.5(c)(3) (requiring disclosure of the amounts and due dates or periods of scheduled payments), 213.5(c)(4) (requiring a statement of whether or not the lessee has the option to purchase, and if so, at what price and time).

3. CAL. CIV. CODE §§ 2985.71(a), 2985.71(a)(4), 2985.71(a)(6), 2985.71(b).

4. See CAL. CIV. CODE §§ 2985.71(a), 2985.71(a)(4), 2985.71(a)(6), 2985.71(b) (conforming state law to federal law).

## **Consumer Protection; weights and measures**

Business and Professions Code §§ 12603, 12604, 12608 (amended).  
A.B. 3099 (Areias); 1988 STAT. CH. 341

Sponsor: State Division of Measurement Standards

Support: Attorney General's Office; Ventura County District Attorney, California District Attorney Association

Under the Fair Packaging and Labeling Act, a person engaged in packaging or labeling a commodity is prohibited from distributing the commodity if its label does not conform to regulations promulgated by the Director of Agriculture.<sup>1</sup> Chapter 341 adds quantity of time to those items currently required to be stated on a commodities label.<sup>2</sup>

*JEP*

---

1. CAL. BUS. & PROF. CODE § 12603. These regulations govern statements of the identity of the commodity; name and place of business of the manufacturer, packer, or distributor; and net quantity of contents in terms of weight, measure, or numerical count. *Id.* See generally 4 CAL. CODE OF REGS. §§ 4514-4521.29 (1987) (regulations governing label and package statements).

2. CAL. BUS. & PROF. CODE § 12608 (time is stated in terms of the standard hour, minute, and second).